

Special payment provisions may apply to particular state agencies and institutions of higher education. The following summarizes these agency- or institution-specific payments and cites the legal authorization for each.

The special payment provisions that apply only to institutions of higher education are summarized in a later section of this chapter, entitled *Payments Specific to Institutions of Higher Education*.

Benefit Replacement Pay for State Agencies (Other than Institutions of Higher Education)

Applies to:

Each state agency that is not an institution of higher education.

Sources:

TEX. GOV'T CODE ANN. § 606.061(3) (Vernon 1994), §§ 659.121, 659.123, 659.125-659.127, 811.001(7), 822.201(c) (Vernon Supp. 2000).

Discussion:

The salary or wages paid after December 31, 1995, to an eligible state employee or eligible state-paid judge must include benefit replacement pay (BRP).

The purpose of BRP is to offset the repeal of the state's payment of the taxes imposed on state employees and state-paid judges under the Federal Insurance Contributions Act (FICA). This payment was commonly known as "state-paid social security." Beginning with wages paid January 1, 1996, state-paid social security ceased.

Definitions

For the purpose of BRP:

- **Employee tax** means the tax that state employees and state-paid judges pay under FICA.
- **Optional retirement program** means the program governed by Chapter 830, Government Code.
- **Retirement contribution** means a mandatory contribution by an eligible state employee or eligible state-paid judge to a retirement system.
- **Retirement system** means the optional retirement program (ORP), the Teacher Retirement System of Texas (TRS), the Employees Retirement System of Texas (ERS), the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two.

- **State agency** means:
 - A department, commission, board, office, or other agency in the executive or legislative branch created by the constitution or a statute of this state; or
 - The supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or
 - A university system or an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

Entitlement

An individual is an “eligible state employee” if the individual was on August 31, 1995:

- Employed by a state agency and eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date; or
- Using unpaid leave from a position with a state agency, if the individual would have been eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date had the individual not been using unpaid leave from that position; or
- Not working for a state agency if:
 - The sole reason for not working for the agency was that the individual’s employment with the agency customarily did not include the summer months; and
 - The individual had contracted with the agency not later than that date for the individual to resume working for the agency not later than September 2, 1995; and
 - The position held by the individual on September 2, 1995, would have made the individual eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on August 31, 1995, if the individual had held the position on that date.

An individual is an “eligible state-paid judge” if the individual on August 31, 1995:

- Held office; and
- Was eligible for state payment of the employee tax under Section 606.065, Government Code, as that section existed on that date.

There is no requirement that an individual satisfy the requirements to be an “eligible state employee” or an “eligible state-paid judge” for the entire day on August 31, 1995. It is sufficient that the individual satisfied those requirements for any part of the day.

As the preceding requirements demonstrate, an individual's status as an eligible state employee or an eligible state-paid judge depends entirely on the facts that existed on August 31, 1995. Therefore, the mere fact that an individual is currently an officer does not prevent the individual from being an eligible state employee. And the mere fact that an individual is currently an employee does not prevent the individual from being an eligible state-paid judge. Any reference in this guide to an individual being an eligible state employee or an eligible state-paid judge is a reference to the facts pertaining to the individual as of August 31, 1995.

Each state agency is responsible for determining whether individuals were employed by a state agency or held office on August 31, 1995.

Employment determinations will be simple unless unusual factual circumstances exist. When this happens, a state agency should consult internal legal counsel, the attorney general, or other appropriate legal counsel. The Comptroller is unable to make an employment determination on behalf of the agency.

The following are some questions that a state agency may find useful when determining an individual's employment status on August 31, 1995:

- Did the individual provide services for the state on August 31, 1995, for which the individual was compensated on a state payroll?
- Did the individual not perform services for the state on August 31, 1995, merely because the individual was using paid leave on that date?
- If the individual performed services on August 31, 1995, but was not paid for those services, did the individual receive any other type of benefit or compensation for those services?
- Did the individual have a written contractual obligation to perform services on August 31, 1995? If so, what were the terms of the contract with respect to being an employee versus an independent contractor?

Payment of BRP

BRP is a separate component of compensation and must be paid under Comptroller object code 7050, which is entitled “Benefit Replacement Pay.”

The statutory formula for determining the amount of an individual’s BRP for a pay period is as follows. The amount is equal to the sum of:

- 5.85 percent of the salary and wages earned by the individual during the pay period that are subject to tax under FICA, not to exceed \$965.25 per calendar year; and
- An additional amount equal to the retirement contribution paid by the individual because of the amount calculated under the preceding bullet.

With one exception, BRP is recalculated and included on each paycheck that includes salary or wages subject to tax under FICA until the maximum calendar year benefit is reached.¹ The exception is for individuals who choose to receive their BRP in equal installments, as discussed below.

Leveling of BRP

Unless prohibited by the state agency that pays an individual’s compensation, the individual may choose for the BRP that the individual is entitled to receive in a calendar year to be paid in equal installments throughout that year. This is commonly known as “leveling.” This option exists only if the individual’s FICA wages are anticipated to be at least \$16,500 during the year in which the leveling will occur. This option must be exercised before the beginning of the year.

¹It is important to remember the following about lump-sum payments. A lump sum payment to a state employee for accrued vacation time constitutes “salary or wages subject to tax under FICA.” A lump sum payment to the estate of a deceased state employee for accrued sick leave does not constitute “salary or wages subject to FICA.” A lump sum payment to the estate of a deceased state employee for accrued vacation leave is “salary or wages subject to FICA” only if the payment occurs during the calendar year of the employee’s death.

Loss of Eligibility to Receive BRP

An individual who for at least 12 consecutive months holds neither a state office nor a state employment forever loses any BRP eligibility the individual had. The 12 consecutive month period does not include any days occurring before September 1, 1995. The 12 consecutive month period ends on the anniversary date of the last day of employment or holding office. For example, the period for an individual whose last day of state employment is September 15, 2000, will end on September 15, 2001. If the individual returns to state employment before September 15, 2001, the individual's BRP eligibility would not be affected. But if the individual returns after September 14, 2001, the individual would have forever lost any BRP eligibility the individual had.

Calculation Factors and Maximums

The Comptroller has devised a simple formula for calculating the amount of an individual's BRP. The formula is mathematically equivalent to the statutory formula discussed above.

The amount of BRP equals the product of the amount of FICA wages earned by the individual, excluding BRP itself; and the factor listed for the retirement system in which the individual is a member or participant, as listed in Exhibit 3.1. The amount of BRP earned during a calendar year may not exceed the amount listed in that exhibit.

If an individual transfers from one retirement system to another, the individual's maximum BRP is the maximum for the retirement system in which the employee is a member or participant after the transfer. This principle applies even if the transfer occurs in the middle of the year.

Exhibit 3.1- Benefit Replacement Pay Maximum Amounts and Calculation Factors by Retirement System

Name of Retirement System	Retirement Contribution Rate	Annual BRP Maximum	Factor	Leveling Amount
Employees Retirement System of Texas	6.00%	\$1,026.86	0.06636415 2	\$85.58/month \$42.79/semi
Teacher Retirement System of Texas	6.40%	\$1,031.25	0.06666666 7	\$85.94/month \$42.97/semi
Judicial Retirement System of Texas – Plan One	6.00%	\$1,026.86	0.06636415 2	\$85.58/month \$42.79/semi
Judicial Retirement System of Texas – Plan Two	6.00%	\$1,026.86	0.06636415 2	\$85.58/month \$42.79/semi
Optional Retirement Program	6.65%	\$1,034.01	0.06685714 3	\$86.17/month \$43.09/semi
Not Participating in a Retirement System	0.00%	\$965.25	0.06213489 1	\$80.44/month \$40.22/semi

Explanation: Paying the leveled amounts for a full year will result in total BRP payments slightly higher than the maximum; therefore, the last payment of the calendar year must be adjusted downward so the ANNUAL MAXIMUM is not exceeded.

Special Considerations for Leveling BRP

An individual who elects to level BRP (a “leveling individual”) is bound by that election for the full calendar year. The individual may not voluntarily rescind that election during the year. Leveling, however, would involuntarily terminate under the circumstances discussed below.

A leveling individual will receive an equal installment of BRP for each pay period (or portion of a pay period) worked, subject to the maximum that may be paid per year under state law and the following restrictions.

LWOP

A leveling individual who is on leave without pay for an entire pay period may not receive any BRP for that pay period. The individual must be dropped from leveling for the remainder of the calendar year in which the leave without pay period occurred.

Excess Payment of Leveled BRP

The BRP received by a leveling individual since the start of a calendar year may not, at any time, exceed the amount the individual would have received since the start of the year without leveling. If the amount of BRP received by a leveling individual for a particular pay period would trigger a violation of this prohibition, then the individual automatically loses leveling eligibility for the remainder of the year. This loss of eligibility takes effect with that pay period.

Change in Compensation

If a state agency anticipates that a change in a leveling individual's compensation will cause the individual's FICA wages for a year to be less than \$16,500, then the agency must drop the individual from leveling, starting with the pay period that the change takes effect.

Transfer

A leveling individual who transfers from one state agency to another in the middle of a year must be dropped from leveling for the remainder of the year unless:

- The receiving agency does not prohibit leveling; and
- There is no break in service; and
- The transfer is effective the first working day of the month.

An individual may elect leveling for a calendar year only before the beginning of that year, even if the individual transfers during the middle of the year from an agency that prohibits leveling to one that does not.

Termination

A leveling individual who terminates employment or leaves office before the end of the year is ineligible to be paid the difference between the BRP actually received and the amount that would have been received had leveling not been elected. This ineligibility exists regardless of whether the termination or leaving office is voluntary or involuntary.

A leveling individual whose eligibility for leveling ends before the end of the year for a reason other than termination of employment or leaving office is entitled to be paid the difference between the amount of BRP that would have been received by the individual up to the date that eligibility ends if leveling had not been elected; and the BRP received by the individual up to the date that eligibility ends.

Authorization to Level

A state agency may not level an individual's benefit replacement pay before the agency receives the individual's signed authorization for leveling.

The authorization must clearly state that an individual will be dropped from leveling if:

- The individual is on leave without pay for a full pay period; or
- The individual's anticipated FICA wages for the year drop below \$16,500.

The authorization also must clearly state that no adjustment will be paid to an individual who terminates employment or leaves office before the end of the year. A failure of the authorization to comply with this requirement, however, does not result in the individual having a valid claim for an adjustment in BRP.

Regular Pay

BRP is paid to a leveling individual only when the individual's regular pay is paid. BRP is not paid in connection with an overtime payment, a lump sum payment for accrued vacation time, a lump sum payment for accrued vacation and sick leave, or a payment of a special item of compensation. A leveling individual who remains on the payroll to exhaust accrued vacation time is entitled to receive BRP as if the individual were not on vacation.

Procedure for a State Agency to Prohibit Leveling of BRP

A state agency may prohibit its officers and employees from leveling BRP. The agency must inform those officers and employees about the prohibition. The agency, however, is not required to renew this prohibition from year to year. The prohibition continues from year to year until eliminated by the agency.

Procedure for a State Agency to Allow Leveling of BRP

A state agency that does not prohibit leveling of BRP must notify each eligible state employee and eligible state-paid judge about the leveling option.

Options for BRP Leveling for State Agencies that Use USPS

During calendar year end processing, the Uniform Statewide Payroll System (USPS) automatically resets the BRP indicator for each eligible state employee and eligible state-paid judge to “N.” This creates the presumption that the employee or judge has not requested leveling. The employing state agency may change the indicator to “Y” if the employee or judge properly requests leveling.

In every case, the BRP accumulator for every eligible employee will be reset to a zero balance for the new calendar year. The BRP accumulator is incremented by payments of BRP, regardless of the leveling option, and is used in the edit for the maximum amounts for the appropriate retirement system.

Tracking BRP Eligibility in the Human Resource Information System (HRIS)

The employee job information record (Record ID 66 for classified and locally funded agencies and Record ID 67 for higher education) in HRIS captures the BRP eligibility indicator field to accommodate reporting needs.

The valid values for the field are defined as follows:

- Y** The employee is eligible for BRP and chooses to level BRP (not available for institutions of higher education).
- N** The employee is eligible for BRP and either is not eligible for BRP leveling or has not chosen to level BRP.
- W** The employee is not eligible for BRP.

All September reappointment personnel maintenance transactions (Reason Code 900) currently require a value to be reported in the BRP leveling indicator field. All new hire setups for classified and locally funded agencies on the job table require a value to be reported in the BRP leveling indicator field.

Retirement Eligibility of BRP Paid to Members of the Teacher Retirement System of Texas or Individuals Participating in the Optional Retirement Program

For an eligible state employee or eligible state-paid judge who does not level, BRP is earned whenever FICA wages are earned until the maximum calendar year benefit is reached. No retirement contribution is deducted from a lump sum payment of accrued vacation time or a lump sum payment of accrued vacation and sick leave. Therefore, the factor for “not participating in a retirement system” must be used when calculating the amount of BRP due on a lump sum payment. Because that factor must be used, the annual maximum BRP for TRS members or individuals participating in ORP no longer applies. A weighted average maximum BRP must be calculated.

With two exceptions, BRP constitutes “salary and wages,” as that term is defined by TEX. GOV’T CODE ANN. § 822.201(b) (Vernon Supp. 2000). BRP does not constitute salary and wages when earned as a result of a lump sum payment of accrued vacation time or a lump sum payment of accrued vacation and sick leave. Whenever BRP constitutes “salary and wages”:

- A retirement contribution must be deducted from the BRP; and
- The BRP must be considered when determining the amount of the state’s contribution to TRS or ORP.

Retirement Eligibility of BRP Paid to Members of the Employees Retirement System of Texas

For an eligible state employee or eligible state-paid judge who does not level, BRP is earned whenever FICA wages are earned until the maximum calendar year benefit is reached. ERS has said that no retirement contribution is deducted from a lump sum payment of accrued vacation time or a lump sum payment of accrued vacation and sick leave. Therefore, the factor for “not participating in a retirement system” must be used when calculating the amount of BRP due on a lump sum payment. Because that factor must be used, the annual maximum BRP for ERS members no longer applies. A weighted average maximum BRP must be calculated. An example of this calculation is provided in Exhibit 3.2.

With two exceptions, BRP constitutes “compensation,” as that term is defined by TEX. GOV'T CODE ANN. § 811.001(7) (Vernon Supp. 2000). BRP does not constitute “compensation” when earned as a result of a lump sum payment of accrued vacation time or a lump sum payment of accrued vacation and sick leave. Whenever BRP constitutes “compensation”:

- A retirement contribution must be deducted from the BRP; and
- The BRP must be considered when determining the amount of the state’s contribution to ERS.

For example, overtime pay specifically is not “compensation.” Therefore, no retirement contribution may be deducted from the pay. But because overtime pay is FICA wages, BRP is earned whenever overtime pay is earned. The amount of this BRP is “compensation.” Consequently, a retirement contribution must be deducted from the BRP.

Exhibit 3.2 – Instructions for Calculating Maximum Benefit Replacement Pay for Lump Sum Payrolls

The maximum BRP payable on a lump sum payroll for employees who do not level is .062134891 times the lump sum payment subject to the following maximum:

$$\left(1 - \frac{\text{YTD BRP}}{\text{Max BRP}}\right) \times \$965.25 = \text{Maximum BRP for lump sum payroll}$$

YTD BRP = BRP paid the employee year-to-date

Max BRP = The maximum BRP for the applicable retirement system.

For example, the maximum BRP on a lump sum payment for a member of Employees Retirement System who has received \$740 in benefit replacement pay year-to-date at the time of their lump sum payment is calculated as follows:

$$\left(1 - \frac{\$740}{1,026.86}\right) \times \$965.25 = \$269.65$$

$$(1 - .72064351518) \times \$965.25 = \$269.65$$

$$.27935648482 \times \$965.25 = \$269.65$$

Assuming the employee’s lump sum payment was \$3,500, the employee’s BRP would be \$3,500 x .062134891 or \$217.47.

Assuming the employee’s lump sum payment was \$7,500, the employee’s BRP would be \$269.65, because that is the maximum BRP they are eligible for and \$7,500 x .062134891 = \$466.01.

Bonuses Awarded to Year 2000 Critical Staff

Applies to:

Funds appropriated for fiscal years 2000-01 to each state agency or institution of higher education.

Source:

Section 9-3.07 of the General Appropriations Act (GAA).

Discussion:

To ensure the successful resolution of the technology problems associated with conversion to the year 2000, a state agency or an institution of higher education may award a bonus from funds appropriated in Articles I through VIII of the GAA that are not otherwise restricted. The bonus may be awarded only to an employee who the agency or institution determines is critical to the successful conversion effort. An employee is critical only if the employee has information resource technical knowledge and experience that, if lost, would be difficult to replace and would severely jeopardize timely completion of the year 2000 project for the agency or institution.

An employee is eligible for the bonus from a state agency or institution of higher education only if the employee was continuously employed in a full-time position by the agency or institution in an information resource technical function for at least three years prior to September 1, 1997. The bonus will be paid to the employee at the successful completion of the signed contract on May 31, 2000. If the employee does not complete the contract because the employee is terminated before May 31, 2000, for other than a performance or disciplinary reason, the employee remains entitled to the bonus.

A bonus awarded to an employee does not affect the employee's eligibility for a merit salary increase or a promotion.

The Employees Retirement System of Texas (ERS) has informed the Comptroller that the bonus does not constitute "compensation," as that term is defined by TEX. GOV'T CODE ANN. § 811.001(7) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the bonus under TEX. GOV'T CODE ANN. § 815.402(a) (Vernon Supp. 2000). Also, the bonus may not be considered when determining the amount of the state's contribution to ERS under TEX. GOV'T CODE ANN. § 815.403(a)(1) (Vernon Supp. 2000).

ERS also has advised the Comptroller that a contribution to the 457 or 401(k) deferred compensation plan may be deducted from the bonus.

Finally, ERS has advised the Comptroller that the bonus does not count when determining the amount of an employee's group term life insurance.

The Teacher Retirement System of Texas (TRS) has informed the Comptroller that the bonus does not constitute “salary and wages,” as that term is defined by TEX. GOV’T CODE ANN. § 822.201(b) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the bonus under TEX. GOV’T CODE ANN. §§ 825.403(a), 830.201(a) (Vernon Supp. 2000). Also, the bonus may not be considered when determining the amount of the state’s contribution to TRS or the optional retirement program under TEX. GOV’T CODE ANN. §§ 825.404(a), 830.201(a) (Vernon Supp. 2000).

The attorney general has advised the Comptroller that child support may be withheld from the bonus.

Clothing and Cleaning Allowances

Applies to:

- A. Department of Public Safety of the State of Texas.
- B. Texas Alcoholic Beverage Commission (TABC).
- C. Parks and Wildlife Department (PWD).
- D. Texas Department of Transportation (TxDOT).
- E. Each state entity that is authorized by the General Appropriations Act (GAA) to pay a cleaning allowance.

Sources:

- A. Rider 32 in the appropriations to the Department of Public Safety in the GAA.
- B. Rider 10 in the appropriations to the Alcoholic Beverage Commission in the GAA.
- C. Rider 13 in the appropriations to PWD in the GAA.
- D. Rider 39 in the appropriations to the Department of Transportation in the GAA.
- E. Section 9-10.19 of the GAA.

Discussion:

- A. A commissioned officer who received a \$1,200 clothing allowance under the GAA for the 1998-99 biennium shall receive a \$1,200 clothing allowance during the 2000-01 biennium. A commissioned officer who received a \$500 cleaning allowance under the GAA for the 1998-99 biennium shall receive a \$500 cleaning allowance during the 2000-01 biennium, regardless of the officer’s promotion to any rank. The legislature intends for no person to receive a \$1,200 clothing allowance during the 2000-01 biennium unless the person is entitled to it as specified in the second sentence of this paragraph. An individual who is newly hired or newly commissioned after September 1, 1997, is eligible to receive a \$500 cleaning allowance. All non-commissioned personnel required to wear uniforms are entitled to a \$500 cleaning allowance.

- B. A commissioned officer who received a \$1,200 clothing allowance under the GAA for the 1998-99 biennium shall receive a \$1,200 clothing allowance during the 2000-01 biennium. The legislature intends for no person to receive a \$1,200 clothing allowance during the 2000-01 biennium unless the person is entitled to it as specified in the preceding sentence. An individual who is newly hired or newly commissioned after September 1, 1997, is eligible to receive a \$500 cleaning allowance. No rank other than that of agent is entitled to a \$500 cleaning allowance. TABC may purchase uniforms for tax collectors at international bridges.
- C. The legislature intends for no funds appropriated by the GAA to provide a clothing or cleaning allowance to any non-uniformed personnel. PWD may continue to expend funds appropriated by the GAA for a cleaning allowance not to exceed \$500 per year.
- D. TxDOT may provide a cleaning allowance for travel counselors not to exceed \$500 per year.
- E. A cleaning allowance is an allotment to help defray the cost of maintaining a uniform for certain state employees. A cleaning allowance authorized in the GAA for a specified position of employment is an authorization for that position. The allowance does not transfer with an employee who transfers from that position to a position for which the allowance is not authorized.
Cleaning and Clothing allowances are not considered compensation for purposes of retirement contribution determination.

Commissioned Peace Officer Compensation

Applies to:

Parks and Wildlife Department (PWD).

Source:

Rider 6 in the appropriations to PWD in the General Appropriations Act.

Discussion:

The executive director of PWD may not provide for the compensation of a state-commissioned peace officer at a rate less than the rate paid by any other state agency to a state-commissioned peace officer performing similar duties.

Compensatory Per Diem Payments

Applies to:

Each state agency.

Sources:

Agencies' enabling legislation and TEX. GOV'T CODE ANN. §§ 659.031-659.033 (Vernon 1994 & Supp. 2000).

Discussion:

Compensatory per diem may be paid to a board member only if the statute creating or authorizing the creation of the board specifically provides for the payment. A full-time, salaried board member is not entitled or eligible to receive compensatory per diem. **Board** means a board, commission, committee, council, governing body, or similar entity in the executive, legislative, or judicial branch of state government that is composed of at least two members.

If a statute provides for the payment of compensatory per diem, the amount of the per diem payment depends on whether Sections 659.031-659.033 apply. Determining whether those sections apply must be accomplished on a board-by-board basis and is beyond the scope of this guide.

If Sections 659.031-659.033 apply, then the amount of the compensatory per diem is \$30 for each day during which an eligible event occurs. The meaning of "eligible event" varies from board to board. For some boards, "eligible event" is limited to attendance at board meetings. For other boards, "eligible event" includes making business-related telephone calls. Each board's statutes must be consulted to determine the meaning of the term for that particular board.

If Sections 659.031-659.033 do not apply, the compensatory per diem amount depends on the resolution of various legal questions that are beyond the scope of this guide.

To process compensatory per diem payments for FACTS payrolls, an agency must use a State of Texas Payroll Voucher with transaction code Ø23 when paying compensatory per diem. This allows the agency to withhold federal income taxes and taxes imposed under the Federal Insurance Contributions Act when the agency determines that withholding is necessary. To process compensatory per diem payments on USPS, an agency must use special pay #14. These transactions must be entered on the Special Payments Screen (HUEU1).

Include the following information on the State of Texas Payroll Voucher:

- Comptroller object code 7025 on the voucher
- Accounting information on the State of Texas Payroll Detail Sheet

- Texas identification number (TIN) for each individual receiving payment on the detail lines of the State of Texas Payroll Detail Sheet
- Payee's name on the address line
- Approval signature or electronic approval if USPS

Include the name of the board the member sits on, purpose of the trip, dates of travel, and name and title of the payee with the payroll voucher. A travel voucher need not be attached to the payroll voucher. Refer to *Textravel* for specific requirements.

Show the payroll ending date as the latest date on which the compensatory per diem was earned or as the last day of a month. If the last day of the month is used, the warrant will be post-dated and must not be distributed or cashed before the issue date of the warrant.

Check the box labeled compensatory per diem (Board Members) under VOUCHER TYPE on the State of Texas Voucher Cover.

Compensatory Time Payments

Applies to:

- A. Department of Agriculture (DA).
- B. Texas Department of Transportation (TxDOT).
- C. South Texas Hospital or the Texas Center for Infectious Disease of the Texas Department of Health (TDH).
- D. Texas Department of Mental Health and Mental Retardation (TDMHMR).
- E. Employees Retirement System of Texas (ERS).
- F. Each employee engaged in a public safety activity.

Sources:

- A. Rider 6 in the appropriations to the Department of Agriculture in the General Appropriations Act (GAA).
- B. Rider 11 in the appropriations to the Department of Transportation in the GAA.
- C. Rider 33(f) in the appropriations to the Department of Health in the GAA.
- D. Rider 20 in the appropriations to the Department of Mental Health and Mental Retardation in the GAA.
- E. TEX. GOV'T CODE ANN. § 815.208(d) (Vernon Supp. 2000).
- F. TEX. GOV'T CODE ANN. § 659.015(g) (Vernon Supp. 2000).

Discussion:

See the information in this chapter about overtime payments for restrictions on the payments described in (A)-(F), below.

- A. This paragraph applies to an employee only if the employee:
 - Is subject to the overtime provisions of the Fair Labor Standards Act (FLSA); and
 - Holds a classified position; and
 - Is stationed at a livestock export pen of the DA. To the extent allowed by law, the DA may pay the employee for compensatory time hours on a straight-time basis when taking compensatory time off would disrupt normal working activities and other critical functions relating to livestock export pen operations.
- B. To the extent allowed by law, TxDOT may pay an employee on a straight-time basis for work on a holiday or for regular compensatory time hours when taking regular compensatory time off would disrupt normal business functions. This authorization applies regardless of whether the employee is subject to the overtime provisions of the FLSA.
- C. To the extent allowed by law, a state chest hospital may pay an employee on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would disrupt normal business functions. This authorization applies regardless of whether the employee is subject to the overtime provisions of the FLSA. For the purpose of this paragraph, **state chest hospital** means only the South Texas Hospital or the Texas Center for Infectious Disease, both of which are under the jurisdiction of TDH.
- D. To the extent allowed by law, TDMHMR may pay an employee on a straight time basis for work on a holiday or for regular compensatory time hours when taking regular compensatory time off would disrupt normal business functions. This authorization applies regardless of whether the employee is subject to the overtime provisions of the FLSA.
- E. The board of trustees of ERS may compensate an employee of ERS at the rate equal to the employee's regular rate of pay for work performed on a legal holiday or for other compensatory time accrued, when taking compensatory time off would be disruptive to ERS's normal business functions. This authorization applies regardless of whether the employee is subject to the overtime provisions of the FLSA.
- F. An employee engaged in a public safety activity, including highway construction and maintenance or an emergency response activity, may be paid for compensatory time at the employee's regular rate of pay if the employee's employer determines that taking the compensatory time off would disrupt normal teaching, research, or other critical functions. This authorization applies only to the compensatory time that may be paid on a straight-time basis, not to the compensatory time that must be paid on a 1.5 times basis under the FLSA.

Educational Leave, Tuition Reimbursement, and Educational Stipend Programs

Applies to:

Texas Department of Health (TDH).

Source:

Rider 19 in the appropriations to the Department of Health in the General Appropriations Act (GAA).

Discussion:

The funds appropriated in Goals A through E of TDH's appropriations in the GAA may not be spent for an educational program that provides tuition reimbursements, stipends, or educational leave for TDH employees.

The commissioner of health must provide prior written approval of the educational leave time, the amount of the stipend or tuition reimbursement, and any other educational program benefit provided to a TDH employee.

The amount of tuition or fees paid by TDH to an institution of higher education for semester hour credit for a TDH employee may not exceed the per semester credit hour charged by that institution for in-state tuition.

Emoluments

Applies to:

Texas School for the Blind and Visually Impaired; Texas School for the Deaf.

Source:

Rider 2 in the General Appropriations Act's (GAA) Special Provisions for the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

Discussion:

The executive director of each school may determine emoluments for certain positions provided that the emoluments are necessary to carry out the job responsibilities of the position.

Estates of Deceased Employees, Payments to

Applies to:

Each state agency or institution of higher education.

Source:

Tex. Prob. Code Ann. § 160(b) (Vernon Supp. 2000).

Discussion:

A payment concerning a deceased employee must be made to the employee's estate unless a payment to the employee's surviving spouse is authorized. A payment to the spouse is authorized only if:

- An affidavit is furnished to the paying agency; and
- The affidavit states that the affiant is the employee's surviving spouse and that no one has qualified as executor or administrator of the employee's estate; and
- The payment relates to wages or unpaid sick or vacation pay.

The paying agency is not required to inquire about the truth of the affidavit.

A new mail code reflecting the payment to the estate of the employee or to the surviving spouse must be established before the payment is made.

Evening, Night, or Weekend Shift Salary Differential

Applies to:

- A. Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department of Health (TDH), and Health and Human Services Consolidated Print Shop.
- B. Any state agency.
- C. TDH, Texas Department of Human Services (TDHS), TDMHMR, Department of Protective and Regulatory Services (DPRS).
- D. General Services Commission (GSC).
- E. Each state agency that pays an evening, night, or weekend shift salary differential.

Sources:

- A. Article II, Section 2(1) of the General Appropriations Act (GAA) (Special Provisions Relating to All Health and Human Services Agencies).
- B. Section 9-3.08 of the GAA.
- C. Article II, Section 2(7) of the GAA (Special Provisions Relating to All Health and Human Services Agencies).
- D. Rider 24 in the appropriations to the State General Services Commission in the GAA.

Discussion:

- A. TDMHMR, TDH, and the Health and Human Services Consolidated Print Shop may pay an additional night shift salary differential not to exceed 10 percent of the monthly pay rate to personnel who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift or its equivalent.
- B. Any state agency may pay an additional evening shift or night shift differential not to exceed 15 percent of the monthly pay rate to registered nurses or licensed vocational nurses who work the 3 p.m. to 11 p.m. shift or its equivalent or who work the 11 p.m. to 7 a.m. shift or its equivalent. An additional weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to registered nurses and licensed vocational nurses. The weekend shift salary differential may be paid to an eligible individual in addition to the evening shift or night shift salary differential.
- C. TDH, TDHS, TDMHMR, and DPRS may pay an evening or night shift salary differential not to exceed 15 percent of the monthly pay rate to personnel in data processing operations who work the 3:00 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m. shift, or their equivalents. A weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to persons who work the weekend shifts. The evening or night shift salary differential may be paid in addition to the weekend shift salary differential for persons working an evening or night shift on the weekend.
- D. To the extent authorized by law, GSC may pay an additional night shift differential to print shop and building and property service employees.
- E. When calculating the amount of an employee's evening, night, or weekend salary differential under A, B, C, or D, above, neither longevity pay nor hazardous duty pay are considered part of the employee's monthly pay rate.
An employee is eligible to receive the evening, night, or weekend shift salary differential when:
 - The employee's normal work shift is in the evening, at night, or on the weekend; or
 - The employee is called in to cover another employee's evening, night, or weekend shift.

The evening, night, or weekend shift salary differential must be considered when calculating the amount of an employee's retirement contributions, federal income tax withholding, or withholding for taxes imposed under the Federal Insurance Contributions Act. The payroll detail printout will list both gross amounts on separate lines, but only one line for the total deductions.

An employee who receives an evening, night, or weekend shift salary differential because the employee worked another employee's shift may be paid the differential on a supplemental payroll.

Fire Prevention Pay

Applies to:

- A. Texas Department of Mental Health and Mental Retardation (TDMHMR).
- B. Texas Youth Commission (TYC).

Sources:

- A. Rider 22 in the appropriations to the Department of Mental Health and Mental Retardation in the General Appropriations Act (GAA).
- B. Rider 9 in the appropriations to the Youth Commission in the GAA.

Discussion:

- A. Regular employees of TDMHMR facilities located in remote areas who are assigned extra duties in fire prevention programs may receive the following payments in addition to the salary rates stipulated in the general provisions of the GAA relating to position classifications and assigned salary ranges:
 - fire chief: \$75 per month.
 - assistant fire chief: \$65 per month.
 - fire brigade members: \$50 per month.
- B. Regular employees of facilities operated by TYC who are assigned extra duties in fire prevention programs may receive the following payments in addition to the salary rates stipulated in Article IX of the GAA for position classifications and assigned salary ranges:
 - fire chief: \$75 per month.
 - assistant fire chief: \$65 per month.
 - fire brigade members: \$50 per month.

Food Stamp Bonuses

Applies to:

Texas Department of Human Services (TDHS).

Source:

Rider 25 in the appropriations to the Department of Human Services in the General Appropriations Act.

Discussion:

If the state receives funding from the federal government in excess of the normal federal contribution toward administrative costs, a portion of those funds not to exceed \$2 million shall be used by TDHS to provide bonuses to position classifications whose efforts directly contributed to meeting certain performance standards. An employee is eligible to receive a bonus only if:

- The employee was employed in the program for the related twelve months; and
- The employee remains employed in the program; and
- The employee's job performance meets expectations. A bonus given to an employee under this authority does not affect the employee's eligibility for a merit salary increase or a promotion.

Hardship Stations Incentive

Applies to:

Department of Public Safety of the State of Texas (DPS).

Source:

Rider 48 in the appropriations to the Department of Public Safety in the General Appropriations Act (GAA).

Discussion:

DPS may designate 25 hardship stations across the state based on excessive vacancies in DPS's traffic law enforcement division. DPS shall provide incentives to commissioned peace officers accepting positions at these posts.

Hazardous Duty Pay for Employees of State Agencies Other Than the Texas Youth Commission

Applies to:

Comptroller of Public Accounts, Department of Public Safety of the State of Texas, General Services Commission, Texas Alcoholic Beverage Commission, Parks and Wildlife Department, Texas Department of Criminal Justice, State Board of Pharmacy, and institutions of higher education.

Sources:

TEX. GOV'T CODE ANN. § 659.062 (Vernon Supp. 2000). See the legislation and attorney general opinions cited in the footnotes.

Discussion:

The following is derived from the policy document to amend the Comptroller's current administrative rule about payroll requirements, which may be found at 34 TEX. ADMIN. CODE ANN. § 5.41 (1999). Because the amendments have not yet been adopted, the following is not yet in effect as a formal rule.

The Comptroller's legal authority to adopt rules concerning hazardous duty pay is TEX. GOV'T CODE ANN. § 659.062(e) (Vernon Supp. 2000). The rules implement TEX. GOV'T CODE ANN. § 659.062 (Vernon Supp. 2000).

Definitions

The following definitions apply for the purposes of hazardous duty pay:

- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003(8) (Vernon Supp. 2000).
- **Lifetime service credit** means the number of months served by an individual in a position that requires performance of hazardous duty.
- **Part-time state employee** means a state employee who normally works fewer than 40 hours each week.
- **Regular hours** means the number of hours actually worked during a month.
- **Standard hours** means the maximum number of hours worked by an employee during a month, assuming the employee worked exactly 8 hours on each workday of the month.
- **State employee** means an individual who:
 - Is a commissioned law enforcement officer of the Department of Public Safety of the State of Texas, the General Services Commission, the Texas Alcoholic Beverage Commission, or the institutional division of the Texas Department of Criminal Justice; or

- Is a commissioned security officer of the Comptroller of Public Accounts; or
 - Is a law enforcement officer commissioned by the Parks and Wildlife Commission; or
 - Is a commissioned peace officer of an institution of higher education; or
 - Is an employee or official of the Board of Pardons and Paroles or the pardons and paroles division of the Texas Department of Criminal Justice if the employee or official has routine direct contact with inmates of any penal or correctional institution or with administratively released prisoners subject to the board’s jurisdiction; or
 - Has been certified to the Employees Retirement System of Texas as a law enforcement officer or a custodial officer under TEX. GOV’T CODE ANN. § 815.505 (Vernon Supp. 2000) by the Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission, the State Board of Pharmacy, or the Texas Board of Criminal Justice.
- **Workday** means any day that is not Saturday, Sunday, or a state or national holiday under TEX. GOV’T CODE ANN. § 662.003 (Vernon Supp. 2000). The term includes a state or national holiday on which a state employee is not entitled to a paid day off from work under TEX. GOV’T CODE ANN. § 662.005 (Vernon Supp. 2000).

Entitlement to Receive Hazardous Duty Pay

Hazardous duty pay must be included in the compensation paid to an individual for services rendered during a month if the individual:

- Is a state employee on the first workday of the month; and
- Has completed at least one year of lifetime service credit not later than the last day of the preceding month.

Hazardous duty pay may not be paid to an individual who does not satisfy both of these criteria.

If an individual is a state employee for any part of a workday, the individual is considered to be a state employee for the entire workday. An individual’s entitlement for hazardous duty pay to be included in the compensation paid to the individual for services rendered during a month is not affected by the individual’s ceasing to be a state employee after the first workday of that month. The full amount of hazardous duty pay must be paid to the individual.

Amount of Hazardous Duty Pay

The monthly amount of hazardous duty pay is \$7 for each 12 months of lifetime service credit, not to exceed \$210.

The amount increases only after each 12 months of lifetime service credit has been completed, not to exceed 360 months. The increase is effective beginning with the month following the month in which the 12th month of lifetime service credit is completed. For example, assume a state employee is paid on a monthly basis. If the employee completes the employee's 180th month of lifetime service credit on August 5th, the first time that the employee's compensation will include \$105 of hazardous duty pay is the compensation paid for services rendered during September. That compensation will be paid on the first workday of October.

The hazardous duty pay of a part-time state employee must be proportionally reduced to account for the fewer hours the employee normally works.

The amount of hazardous duty pay for an hourly state employee for a particular month is equal to: $(\$7) \times (\text{number of 12 month periods of lifetime service credit the employee has completed}) \times (\text{the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month})$ divided by $(\text{the number of standard hours for that month})$.

A state employee may not receive more than \$7 for each 12 months of lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

Lifetime Service Credit

An individual accrues lifetime service credit for the period in which the individual holds a position that requires performance of hazardous duty. The position need not be a position that would make the individual a "state employee" as that term is defined in the hazardous duty pay definitions, above.

An individual's effective service date is the starting point for determining the amount of the individual's lifetime service credit. The amount of an individual's lifetime service credit at any given point is equal to the number of months (not calendar months) that have elapsed since the individual's effective service date. A month begins on the same day each month as the effective service date and ends on the day before that day during the next month. For example, assume an individual's effective service date is August 5, 1985. For that individual, February 5, 2000, through March 4, 2000, would constitute a month of lifetime service credit (regardless of how many days are included in that month).

“Effective service date” is the first day of the individual’s current continuous employment in a position that requires performance of hazardous duty, as adjusted for any lifetime service credit accrued during previous employments in like positions. For this purpose, an individual’s transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

The amount of lifetime service credit accrued by an individual during previous employments in positions that required performance of hazardous duty must be expressed in terms of “number of days served.” “Number of days served” is determined by counting each day of service. The individual gets one full day of credit for any part of a day served. Count all days served in all previous periods of employment in positions that required performance of hazardous duty.

Once the amount of lifetime service credit accrued during previous employments has been determined in terms of “number of days served,” the amount is used to determine the individual’s “effective service date.” This is done by counting backwards from the first day of the individual’s current continuous employment in a position that requires performance of hazardous duty. For example, assume an individual accrued 2154 days of lifetime service credit during previous employments. Also assume that the first day of the individual’s current continuous employment was August 5, 1985. Counting back 2154 days would yield an effective service date of September 12, 1979.

Waiting Period

An individual must complete 12 months of lifetime service credit before the individual may receive hazardous duty pay. These 12 months are not required to be continuous.

Employee Transfers

The state agency that employs an individual on the first workday of a month must pay any hazardous duty pay that must be included in the compensation paid to the individual for services rendered during that month. For example, assume an individual’s last day of employment with state agency #1 is the second workday of the month and the individual’s first day of employment with state agency #2 is the third workday of that month. State agency #1 is responsible for paying all hazardous duty pay that must be included in the compensation paid to the individual for services rendered during that month.

First Type of Grandfathered Employees

Historical and Legal Background

The general law in effect after August 31, 1979, and before August 4, 1987, said that the amount of a state employee's hazardous duty pay was based on years of service with the current employing agency.² An employee who received hazardous duty pay was ineligible to receive longevity pay.³

However, beginning with the General Appropriations Act (GAA) for the 1980-81 biennium and continuing through the GAA for the 1986-87 biennium, the legislature attempted to change this law by appropriations rider. Article V, Section 2(c) of each of those GAAs said that a state employee who transferred from one agency to another could transfer the employee's service credits to the second agency. In effect, the rider said that the amount of hazardous duty pay for an employee was based on the employee's years of service with the state, not just on the employee's years of service with the current employing agency.

This rider was widely, perhaps universally, followed. As a result, the amount of hazardous duty pay for employees was based on the calculation method specified in the rider instead of in general law.

This changed on May 29, 1987. On that date, the attorney general said the rider was unconstitutional as an attempt to amend general law through an appropriations provision.⁴ The effect was to reduce the amount of many employees' hazardous duty payments because the attorney general said the amount must be based on years of service with the current employing agency, not on total years of state service.

During its second called session in the summer of 1987, the legislature responded to the attorney general opinion. Effective August 4, 1987, the legislature changed the law so that the amount of a state employee's hazardous duty pay was based on lifetime service credit, i.e., years of service in any position with the state that required performance of hazardous duty. In addition, the law was changed so that an employee receiving hazardous duty pay also was entitled to receive longevity pay for time served in positions that did not require performance of hazardous duty.⁵

However, these changes to the law were not a complete response to the attorney general opinion because some employees would have remained disadvantaged as a result of that opinion had the legislature not done anything more. The amount of hazardous duty pay for each year of lifetime service credit was 75 percent greater than the amount of longevity pay for each year of service. Thus, an employee with 30 years of total state service, but only 10 years of

²The pay was not based just on years of service in a position that required performance of hazardous duty. Op. Tex. Att'y Gen. No. JM-713 (1987).

³See Act of May 7, 1979, 66th Leg., R.S., ch. 211, § 1, 1979 Tex. Gen. Laws 456 (formerly codified at Article 6252-20b, Vernon's Texas Civil Statutes).

⁴Opinion JM-713.

⁵See Act of July 18, 1987, 70th Leg., 2nd C.S., ch. 57, § 1, 1987 Tex. Gen. Laws 190.

lifetime service credit, would have received \$210 in hazardous duty pay before May 29, 1987, but only \$150 of combined hazardous duty and longevity pay on and after August 4, 1987.

The legislature enacted the following grandfather provision to eliminate any residual harm employees might have suffered from the attorney general opinion:

A state employee who received hazardous duty pay based on total state service performed before May 29, 1987, is entitled to continue to receive hazardous duty pay based on those services if, on or after May 29, 1987, the employee holds a position that requires the performance of hazardous duty.⁶

Policy

The following policy applies only to a state employee whose compensation for services provided during any month before August 1987 included hazardous duty pay that was based on total state service performed before May 29, 1987.

The amount of the employee's hazardous duty pay is equal to the sum of:

- \$7 for each 12 months of state service credit the employee finished accruing before May 29, 1987 (regardless of whether the credit was accrued while holding a position that required the performance of hazardous duty); and
- \$7 for each 12 months of lifetime service credit, if the credit is accrued after the date (which must be before May 29, 1987) on which the employee finished accruing the last 12 month period of state service credit.

The employee's lifetime service credit *for longevity pay purposes* does not include any year of state service credit the employee finished accruing before May 29, 1987, if the employee is drawing hazardous duty pay under this policy.

Second Type of Grandfathered Employees

Historical and Legal Background

The general law in effect after August 31, 1979, and before August 4, 1987, said that only the following state employees were entitled to receive hazardous duty pay:

- Commissioned law enforcement personnel of the Department of Public Safety, the State Board of Control, or the Texas Alcoholic Beverage Commission; and
- Law enforcement officers commissioned by the Texas Parks and Wildlife Commission; and
- Commissioned peace officers of state institutions of higher education; and
- Law enforcement personnel commissioned by the Texas Department of Corrections.⁷

⁶Act of July 18, 1987, 70th Leg., 2nd C.S., ch. 57, § 2(b), 1987 Tex. Gen. Laws 190.

⁷Act of May 7, 1979, 66th Leg., R.S., ch. 211, § 1, 1979 Tex. Gen. Laws 456 (formerly codified at Article 6252-20b, Vernon's Texas Civil Statutes).

However, three agency-specific riders in the GAA for the 1986-87 biennium attempted to broaden the universe of state employees who were entitled or authorized to receive hazardous duty pay. The agencies involved were the Texas Alcoholic Beverage Commission (TABC),⁸ the Texas Department of Corrections (TDC),⁹ and the Texas Parks and Wildlife Department (TPWD).¹⁰

⁸The 1986-87 TABC rider authorized TABC to make hazardous duty payments to the following commissioned law enforcement personnel: chief, enforcement and marketing practices; assistance chief, enforcement and marketing practices; district supervisor; assistant district supervisor; senior agent; and agent I, II, or III. Appropriations—General Act, 69th Leg., R.S., ch. 980, art. I, § 1, 1985 Tex. Gen. Laws 3349, budget 29 (rider #7 in the appropriations to TABC).

The 1986-87 rider also required TABC to make hazardous duty payments to an individual in one of the following classified positions if the individual was receiving hazardous duty pay as of August 31, 1981: port of entry supervisor; port of entry inspector I or II; supervising auditor I or II; auditor I, II, or III; assistant director, auditing and tax reporting; and senior tax auditor. *Id.*

Because the 1986-87 rider referred to employees receiving hazardous duty pay as of August 31, 1981, it is necessary to consider the 1980-81 TABC rider. The rider said that an individual engaged full time in law enforcement work who held one of the following classified positions was eligible to receive hazardous duty pay: supervisor tax collector; tax collector I or II; district supervisor; chief, enforcement division; assistant chief, enforcement division; assistant district supervisor; inspector I or II; supervising auditor I; auditor I, II, or III; supervisor, marketing practices; assistant supervisor, marketing practices; special project director; director of auditing; or assistant director of auditing. Appropriations—General Act, 66th Leg., R.S. ch. 843, art. I, § 1, 1979 Tex. Gen. Laws 2445, 2584.

⁹The 1986-87 TDC rider authorized TDC to make hazardous duty payments to individuals holding the following positions:

- Correctional officer I through warden.
- All other employees assigned to work on a unit and whose job routinely requires direct contact with inmates. Examples included farm manager, livestock supervisor, maintenance foreman, shop foreman, medical assistant, food service supervisor, steward, education consultant, commodity specialist, and correctional counselors.
- Employees assigned to administrative offices whose job requires routine direct contact with inmates. Examples included investigators, compliance monitors, accountants routinely required to audit unit operations, sociologists, interviewers, classification officers, and supervising counselors.
- Administrative positions whose jobs require response to emergency situations involving inmates. Examples included director, deputy directors, assistant directors, and not more than 25 administrative duty officers.

Rider #30 in the appropriations to TDC, budget 70.

The 1986-87 TDC rider also expressed legislative intent that all individuals receiving hazardous duty pay as of August 31, 1985, should continue to receive it. *Id.*

Because the 1986-87 TDC rider referred to individuals receiving hazardous duty pay as of August 31, 1985, it is necessary to consider the 1984-85 TDC rider. The rider authorized TDC to make hazardous duty payments to persons holding certain specified classified positions and to persons “who work within the prison compound or whose work requires daily contact with inmates.” The specified classified positions were warden I and II; assistant warden; major of correctional officers; captain of correctional officers; lieutenant of correctional officers; sergeant of correctional officers; and correctional officers I, II, and III. The rider imposed a limit of 500 on the number of employees who were eligible to receive hazardous duty pay by virtue of working “within the prison compound” or because their “work requires daily contact with inmates.” Appropriations—General Act, 68th Leg., R.S., ch. 1095, art. I, § 1, 1983 Tex. Gen. Laws 5729, 5794 (rider #27 in the appropriations to TDC).

¹⁰The 1986-87 TPWD rider required TPWD to make hazardous duty payments to all commissioned law enforcement personnel of TPWD. Rider #6 in the appropriations to TPWD, budget 154.

These riders were followed by the above agencies. As a result, some employees of those agencies were receiving hazardous duty pay during fiscal year 1987 that they were not eligible to receive under general law.

This changed on May 29, 1987. On that date, the attorney general said that two of the riders were unconstitutional as an attempt to amend general law through an appropriations provision.¹¹ Although the attorney general did not discuss the other rider, it was equally unconstitutional under the reasoning used in the opinion. The effect was to eliminate the eligibility of many employees to receive hazardous duty pay.

During its second called session in the summer of 1987, the legislature responded to the attorney general opinion. Effective August 4, 1987, the legislature broadened the universe of state employees who were entitled to receive hazardous duty pay. Law enforcement officers and custodial officers certified under Section 25.505, Title 110B, Revised Statutes were added.¹²

In apparent recognition of the fact that this broadening was not enough to protect state employees who were receiving hazardous duty pay under the riders invalidated by the attorney general, the legislature enacted the following grandfather provision:

Any ... state employee who before May 29, 1987, received hazardous duty pay based on the terms of any law enacted by the legislature ... is entitled to continue to receive hazardous duty pay for services performed on or after May 29, 1987, in any position designated under that law as eligible for the pay.¹³

Policy

The following policy applies only to an individual who is not a state employee on the first workday of a month. Hazardous duty pay must be included in the compensation paid to the individual for services rendered during that month if the individual:

- On May 29, 1987, was receiving or was entitled to be receiving hazardous duty pay based on the terms of an appropriations rider for the 1986-87 fiscal biennium that applied only to TABC, TDC, or TPWD; and
- The individual holds on the first workday of that month a position designated under that rider as eligible for the pay.¹⁴

If a rider for the 1986-87 fiscal biennium required an individual to work full-time in a position designated by the rider as eligible for hazardous duty pay before the individual could receive the pay, then the individual is currently eligible to receive the pay only if the individual currently works full-time.

¹¹Opinion JM-713.

¹²See Act of July 18, 1987, 70th Leg., 2nd C.S., ch. 57, § 1, 1987 Tex. Gen. Laws 190.

¹³Act of July 18, 1987, 70th Leg., 2nd C.S., ch. 57, § 2(b), 1987 Tex. Gen. Laws 190.

¹⁴The positions designated under the riders are listed in an earlier footnote.

Hazardous Duty Pay for Employees of the Texas Youth Commission

Applies to:

Texas Youth Commission (TYC).

Source:

TEX. GOV'T CODE ANN. § 659.063 (Vernon Supp. 2000).

Discussion:

An employee of TYC who has routine direct contact with youth placed in a residential facility of TYC or with youth released under TYC's supervision may receive hazardous duty pay. The amount of the pay may not exceed the amount authorized by TEX. GOV'T CODE ANN. § 659.062(a) (Vernon Supp. 2000).

Hazardous duty pay for a TYC employee is subject to the conditions and limitations in the General Appropriations Act. During periods when a TYC employee does not receive the full amount of the hazardous duty pay for which the employee is eligible, the employee is entitled to receive longevity pay for time accrued in a hazardous duty position, but only until hazardous duty payments resume.

Hazardous duty pay may not be made from funds authorized for payment of an across-the-board salary increase. Hazardous duty pay may not be paid to an employee who works in TYC's central office or whose work for TYC involves only occasional contact with youth.

Holiday Pay

Applies to:

Texas Department of Transportation (TxDOT).

Source:

Rider 8 in the appropriations to the Department of Transportation in the General Appropriations Act (GAA).

Discussion:

The GAA says the following about hourly employees. TxDOT may grant compensatory time off to or pay employees for work performed on official state holidays in addition to any applicable holiday pay.

Hourly Wage Rates for Employees of the Texas Department of Transportation

Applies to:

Texas Department of Transportation (TxDOT).

Source:

Rider 7 in the appropriations to the Department of Transportation in the General Appropriations Act (GAA).

Discussion:

The Texas Transportation Commission may determine the wage rates paid to hourly employees; however, it is the legislature's intent for the commission to provide for a merit wage increase program for TxDOT's hourly employees comparable to that for the department's classified employees as provided by the GAA. It also is the legislature's intent for the merit wage increase program to be administered uniformly throughout TxDOT, statewide, and consistently among all administrative districts. Merit raises may be awarded in varying amounts according to the nature of work performed or the job title held, provided that they do not exceed the top step for a particular job as determined by TxDOT.

Housing

Applies to:

- A. Adjutant General's Department.
- B. General Services Commission.
- C. Texas Department of Mental Health and Mental Retardation (TDMHMR).
- D. Texas Youth Commission (TYC).
- E. Texas Department of Criminal Justice (TDCJ).
- F. Parks and Wildlife Department (PWD).
- G. Texas Historical Commission.
- H. Each agency required to report housing to the General Land Office.

Sources:

- A. Rider 10 in the appropriations to the Adjutant General's Department in the General Appropriations Act (GAA).
- B. Rider 23 in the appropriations to the General Services Commission in the GAA.
- C. Rider 36 in the appropriations to the Department of Mental Health and Mental Retardation in the GAA.
- D. Rider 15 in the appropriations to the Youth Commission in the GAA.
- E. Rider 16 in the appropriations to the Department of Criminal Justice in the GAA.

- F. Rider 15 in the appropriations to Parks and Wildlife Department (PWD) in the GAA.
- G. Rider 2 in the appropriations to the Texas Historical Commission in the GAA.
- H. Section 9-10.18 of the GAA.

Discussion:

- A. The adjutant general, the assistant adjutant general-air, and the assistant adjutant general-army may live in state-owned housing as set forth in Section 9-10.18 of the GAA. In addition, the adjutant general's department may allocate existing department housing to other department employees with a demonstrated need based on location and job description at a rate in accordance with Section 9-10.18.
- B. A state cemetery employee may live in the state cemetery caretaker's residence as set forth in Section 9-10.18 of the GAA.
- C. The superintendent, medical director, assistant superintendent for programs, and director of plant maintenance at each facility of TDMHMR may live in state-owned housing at a rate determined by TDMHMR. Other TDMHMR employees may live in state-owned housing as set forth in Section 9-10.18 of the GAA.
- D. As of September 1, 1998, the chief superintendent, assistant superintendent, and the director of security for TYC may live in state-owned housing at a rate determined by TYC. Other TYC employees may live in state-owned housing as set forth in Section 9-10.18 of the GAA.
- E. A regional director, a chief warden, an assistant warden, a major of correctional officers, a captain of correctional officers, a lieutenant of correctional officers, a kennel sergeant, a maintenance supervisor, or a fire/safety manager of TDCJ may live in state-owned housing at rental rates determined by TDCJ. Other TDCJ employees may live in available state-owned housing in accordance with Section 9-10.18 of the GAA. Notwithstanding that section, TDCJ may allocate housing at reduced or no cost to employees with a demonstrated need based on location and job description.
- F. The manager or assistant manager of a state park, wildlife management area, or hatchery may live in state-owned housing at a rate determined by PWD. Other PWD employees may live in state-owned housing in accordance with Section 9-10.18 of the GAA.
- G. An employee of the Texas Historical Commission may be provided the caretaker's cottage and utilities in return for living on the grounds of the Sam Rayburn House Museum in Bonham, Texas.
- H. Section 9-10.18 of the GAA says the following. Each agency required to report employee housing to the General Land Office shall recover at least 20 percent of the established fair market rental value of its housing from persons first employed by the agency before September 1, 1999, and 100 percent from persons first employed by the agency after August 31, 1999.

Incentives, Enhanced Compensation, and Expenses for High-Performing Employees

Applies to:

Comptroller of Public Accounts.

Source:

Rider 5 in the appropriations to the Comptroller of Public Accounts in the General Appropriations Act (GAA).

Discussion:

The Comptroller may spend amounts from funds appropriated in the GAA for the 2000-01 biennium to enhance compensation, provide incentives, or pay associated expenses for high-performing employees employed by the Comptroller. This authority is in addition to existing authority and amounts related to employee compensation and benefits.

Information Technology Recruitment and Retention Bonus

Applies to:

Each agency or institution of higher education.

Source:

Section 9-3.09 of the General Appropriations Act.

Discussion:

To enhance the recruitment and retention of information technology employees, an agency or institution of higher education may pay a bonus of not more than \$3,000 to an individual employed as a systems analyst, network specialist, programmer, or database administrator if the following preconditions have been satisfied. The individual must have remained with the agency or institution in an eligible position for at least twelve continuous months after entering into a bonus contract that required the individual to remain in that position for at least twelve months. The individual must have entered into the contract only after being employed at least twelve months in an eligible position. If the preconditions have been satisfied, the bonus must be included in the employee's paycheck the month after the end of the month in which the preconditions were satisfied. The bonus will not count against the agency's or institution's salary cap.

The Employees Retirement System of Texas (ERS) has informed the Comptroller that the information technology recruitment and retention bonus does not constitute “compensation,” as that term is defined by TEX. GOV’T CODE ANN. § 811.001(7) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the bonus under TEX. GOV’T CODE ANN. § 815.402(a) (Vernon Supp. 2000). Also, the bonus may not be considered when determining the amount of the state’s contribution to ERS under TEX. GOV’T CODE ANN. § 815.403(a)(1) (Vernon Supp. 2000).

The Teacher Retirement System of Texas (TRS) has informed the Comptroller that the information technology recruitment and retention bonus does not constitute “salary and wages,” as that term is defined by TEX. GOV’T CODE ANN. § 822.201(b) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the bonus under TEX. GOV’T CODE ANN. §§ 825.403(a), 830.201(a) (Vernon Supp. 2000). Also, the bonus may not be considered when determining the amount of the state’s contribution to TRS or the optional retirement program under TEX. GOV’T CODE ANN. §§ 825.404(a), 830.201(a) (Vernon Supp. 2000).

Language Interpreter Services

Applies to:

Texas Department of Mental Health and Mental Retardation (TDMHMR).

Source:

Rider 33 in the appropriations to the Department of Mental Health and Mental Retardation in the General Appropriations Act.

Discussion:

A facility of TDMHMR may increase the salary of a classified employee who assumes the duty of providing interpretation services to consumers whose primary language is not English. The increase may be provided only upon written authorization of the commissioner of TDMHMR or the commissioner’s designee. The amount of the increase is equal to a one step increase, or 3.4 percent, so long as the resulting salary rate does not exceed the rate designated as the maximum rate for the applicable salary group. The increase shall be granted only for the regular provision of interpreter services above and beyond the regular duties of the employee’s position. The increase shall be removed when these services are, for whatever reason, no longer provided by the employee or when they are no longer needed by the facility. A salary increase provided for this purpose is not a merit increase and does not affect the employee’s eligibility to receive a merit increase.

Longevity Pay

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.041-659.047 (Vernon 1994 & Supp. 2000).

Discussion:

The following is derived from the policy document to amend the Comptroller's current administrative rule about payroll requirements, which may be found at 34 Tex. Admin Code § 5.41 (1999).¹⁵ Because the amendments have not yet been adopted, the following is not yet in effect as a formal rule.

The Comptroller's legal authority to adopt rules concerning longevity pay is TEX. GOV'T CODE ANN. § 659.047 (Vernon 1994). The rules implement Subchapter D of Chapter 659, Government Code.

Definitions

For the purposes of longevity pay, the following definitions apply:

- **Academic position** means a faculty or other position that involves only academic research or the teaching of one or more academic courses.
- **Appointment** means a job title.
- **Calendar month** means the period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.
- **Day** means the 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.
- **Full-time state employee** means:
 - A state employee who works in the executive or judicial branch of state government, other than an institution of higher education, and who is normally scheduled to work a total of at least 40 hours a week for a single state agency; or
 - A state employee who works for an institution of higher education and who is normally scheduled to work a total of at least 40 hours in one position, as determined by the institution; or
 - A state employee who works in the legislative branch of state government and who is normally scheduled to work a total of 40 or more hours a week in all positions held in the legislative branch.

¹⁵The main text includes changes made to the law by the Texas legislature during its 76th regular session in 1999.

- **Governing body** means the board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency.
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003(8) (Vernon Supp. 2000).
- **Military service** means service as a member of the Armed Forces of the United States, the Texas National Guard, the Texas State Guard, or a reserve component of the Armed Forces of the United States.
- **Part-time state employee** means a state employee who is not a full-time state employee.
- **Public junior college** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003(2) (Vernon Supp. 2000).
- **Service in the uniformed services** has the meaning assigned by 38 U.S.C. § 4303(13).
- **State agency** includes an institution of higher education.
- **State employee** means an individual who:
 - Is covered by the Position Classification Act; or
 - Holds a line-item or exempt position; or
 - Is an hourly employee of the state; or
 - Works in a position, other than an academic position, at an institution of higher education at least 20 hours a week for at least 4.5 consecutive months.
- **Temporary employee** means an individual who contracts with a state agency to provide services as an independent contractor or who provides services to a state agency as the employee or independent contractor of an independent contractor. The term does not include a state employee.
- **Temporary state employee** means a state employee who is hired to provide services to a state agency for a limited time. The term includes a retiree of a state retirement system who is hired by a state agency to work as a state employee less than the maximum time the retiree may work each fiscal year to avoid suspension of the retiree's retirement annuity and a seasonal employee. The term does not include an independent contractor or the employee or independent contractor of an independent contractor.
- **Workday** means any day that is not Saturday, Sunday, or a state or national holiday under TEX. GOV'T CODE ANN. § 662.003 (Vernon Supp. 2000). The term includes a state or national holiday on which a state employee is not entitled to a paid day off from work under TEX. GOV'T CODE ANN. § 662.005 (Vernon Supp. 2000).

Entitlement to Longevity Pay

Longevity pay must be included in the compensation paid to an individual for services rendered during a month if the individual:

- Is a full-time state employee on the first workday of the month; and

- Is not on leave without pay on the first workday of the month; and
- Has accrued at least 60 months of lifetime service credit not later than the last day of the preceding month.

Longevity pay may not be paid to an individual who does not satisfy all three of these criteria.

If an individual is a state employee for any part of a workday, the individual is considered to be a state employee for the entire workday. An individual's entitlement for longevity pay to be included in the compensation paid to the individual for services rendered during a month is not affected by the individual's ceasing to be a full-time state employee after the first workday of that month. The full amount of longevity pay must be paid to the individual.

Notwithstanding the second bullet, above, about leave without pay, an employee of the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf who is otherwise entitled to longevity pay is entitled to the pay for each month that the employee is in full-time paid status on the first workday for which the school has work scheduled for the employee.

Appointments at Institutions of Higher Education

A "full-time state employee" is a state employee who works for an institution of higher education and who is normally scheduled to work a total of at least 40 hours a week in one position.

A problem arises whenever a state employee has more than one appointment with a particular institution of higher education and the employee is not normally scheduled to work at least 40 hours a week in any of those appointments. The institution must determine whether the hours normally scheduled to work in each appointment should be added together. The institution does this by determining whether each appointment is a separate position or whether the appointments together constitute only one position. This determination takes effect not earlier than the date the employees under the institution's jurisdiction start having reasonable access to a written description of the institution's determination. The institution must ensure that the Comptroller receives written notice of the determination, which must be provided to the Comptroller according to the Comptroller's requirements.

Another problem arises whenever a state employee has an appointment with at least two institutions of higher education and the employee is not normally scheduled to work at least 40 hours a week in any particular appointment.

If the institutions are governed by the same board of regents, then the board must determine whether the hours normally scheduled to work in each appointment should be added together. The board does this by determining whether each appointment is a separate position or whether the appointments together constitute only one position. The board's determination

must apply to every institution under the board's jurisdiction. The determination takes effect not earlier than the date the employees under the board's jurisdiction start having reasonable access to a written description of the determination. The board must ensure that the Comptroller receives written notice of the determination, which must be provided to the Comptroller according to the Comptroller's requirements.

If the institutions are not governed by the same board of regents, then the number of positions the employee holds is deemed to be equal to the number of appointments the employee holds.

Individuals Prohibited From Receiving Longevity Pay

Regardless of any other factor, the compensation of an individual for services rendered during a month may not include longevity pay if the individual, on the first workday of that month:

- Is a member of the legislature; or
- Holds a statewide office that is normally filled by vote of the people; or
- Is an independent contractor or an employee or independent contractor of an independent contractor; or
- Is a temporary employee; or
- Is a temporary state employee; or
- Is a part-time state employee; or
- Is an officer or employee of a public junior college; or
- Holds an academic position at an institution of higher education; or
- Is employed by the governing board of the Texas School for the Deaf under an employment contract for:
 - Providing direct and regular educational services to students; or
 - Supervising any employee who provides direct and regular educational services to students; or
 - Providing other professional, educational services; or
- Is employed by the governing board of the Texas School for the Blind and Visually Impaired under an employment contract for:
 - Providing direct and regular educational services to students; or
 - Supervising any employee who provides direct and regular educational services to students; or
 - Providing other professional educational services.

The entitlement to receive longevity pay of an individual who holds a non-academic position on a full-time basis is not affected by the individual also teaching one or more academic courses or engaging in academic research, or both.

Amount of Longevity Pay

The monthly amount of longevity pay is \$4 for each 12 months of lifetime service credit.

The amount increases only when the 120th, 180th, 240th, 300th, 360th, 420th, and 480th months of lifetime service credit are accrued. The increase is effective beginning with the month following the month in which the 120th, 180th, 240th, 300th, 360th, 420th, and 480th month of lifetime service credit is accrued. For example, assume an individual is paid on a monthly basis. If the individual accrues 180 months of lifetime service credit on August 5th, the first time that the individual's compensation will include \$60 of longevity pay is the compensation paid for services rendered during September. That compensation will be paid on the first workday of October.

The amount of longevity pay is as follows (service credit amounts are as of the last day of the month preceding the month in which the pay is earned):

- At least 60 months but less than 120 months of lifetime service credit: \$20 per month.
- At least 120 months but less than 180 months of lifetime service credit: \$40 per month.
- At least 180 months but less than 240 months of lifetime service credit: \$60 per month.
- At least 240 months but less than 300 months of lifetime service credit: \$80 per month.
- At least 300 months but less than 360 months of lifetime service credit: \$100 per month.
- At least 360 months but less than 420 months of lifetime service credit: \$120 per month.
- At least 420 months but less than 480 months of lifetime service credit: \$140 per month.
- At least 480 months of lifetime service credit: \$160 per month.

An employee may not receive more than \$4 for each 12 months of lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

Which Payrolls May Include Longevity Pay

Monthly Employees

This paragraph applies to a state employee if the employee is normally paid once each month and is entitled to receive longevity pay. The longevity pay that must be included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time the compensation is paid to the employee.

Twice Monthly Employees

This paragraph applies to a state employee if the employee is normally paid twice each month and is entitled to receive longevity pay. The longevity pay that must be included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time that the compensation earned by the employee during the first half of the month is paid to the employee.

Biweekly Employees

This paragraph applies to a state employee if the employee is normally paid once every two weeks and is entitled to receive longevity pay. The longevity pay that must be included in the compensation earned by a state employee during a particular month must be paid in its entirety on the pay date that is closest to the date that a monthly employee is paid the compensation earned by the employee during that month.

Verification of Previously Accrued Lifetime Service Credit

The longevity pay entitlement of a full-time state employee with previously accrued lifetime service credit is not contingent on the current employer first verifying that amount of credit. A state agency that delays paying longevity pay to a full-time state employee until the credit is verified owes back longevity pay to the employee for the period it should have been, but was not, paid.

Employee Transfers

The state agency that employs an individual on the first workday of a month must pay any longevity pay that must be included in the compensation paid to the individual for services rendered during that month. For example, assume an individual's last day of employment with state agency #1 is the second workday of the month and the individual's first day of employment with state agency #2 is the third workday of that month. State agency #1 is responsible for paying all longevity pay that must be included in the compensation paid to the individual for services rendered during that month.

Lifetime Service Credit

General Provisions

An individual accrues lifetime service credit for the period in which the individual:

- Serves as a full-time, part-time, or temporary state employee or otherwise serves as an employee of the state, regardless of whether the individual was a student during that service; or
- Serves as a full-time, salaried, non-elected member of a governing body; or
- Serves as a member of the legislature; or
- Holds a statewide office that is normally filled by vote of the people; or

- Holds an academic position at an institution of higher education; or
- Served as a Texas National Guard technician before January 1, 1969.

An individual does not accrue lifetime service credit for the period in which the individual serves as a temporary employee, as an officer or employee of a public junior college, or as a part-time member of a state board or commission.

Leave Without Pay

An individual who is on leave without pay for an entire calendar month does not accrue lifetime service credit for the month. An employee who is on leave without pay for less than an entire calendar month accrues lifetime service credit for the month if the employee otherwise qualifies to accrue the credit.

Simultaneously Holding More Than One Position

An individual who simultaneously holds two or more positions that each accrue lifetime service credit accrues credit for only one of them.

Starting Work on the First Workday of a Month

An individual who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first day of the month.

Comparison With Retirement Service Credit

The amount of service credit that an individual has accrued for retirement purposes frequently will be different than the amount of lifetime service credit the individual has accrued for longevity pay purposes. For example, when an individual purchases military service credit for retirement purposes, the purchase does not increase the amount of the individual's lifetime service credit for longevity pay purposes.

Hazardous Duty Pay

The lifetime service credit of an individual for longevity pay purposes does not include the period served in any position that requires the performance of hazardous duty so long as the individual holds a position that entitles the individual to receive hazardous duty pay. The lifetime service credit of an individual includes the period served in a position that requires the performance of hazardous duty so long as the individual holds a position that does not entitle the individual to receive hazardous duty pay.

During the one year that a state employee serves in a hazardous duty position before becoming eligible or entitled to receive hazardous duty pay, the employee accrues lifetime service credit for longevity pay purposes. The amount of longevity pay the employee receives during that year is based, at least in part, on the credit accrued during that year. However, the lifetime service credit used to calculate the amount of longevity pay received by the employee while receiving hazardous duty pay does not include the one year waiting period.

If an employee of the Texas Youth Commission does not receive the hazardous duty pay to which the employee is eligible, then the amount of the employee's lifetime service credit for longevity pay purposes includes the time spent by the employee in the hazardous duty position. This is true only until the employee begins receiving the hazardous duty pay.

If an employee is receiving hazardous duty pay under the provision quoted below, the employee's lifetime service credit does not include any year of state service credit the employee finished accruing for hazardous duty pay purposes before May 29, 1987.

A state employee who received hazardous duty pay based on total state service performed before May 29, 1987, is entitled to continue to receive hazardous duty pay based on those services if, on or after May 29, 1987, the employee holds a position that requires the performance of hazardous duty.¹⁶

Employees Who Work Less Than a Full Year Under a Formal Written Contract

This paragraph applies to an individual who is eligible to accrue lifetime service credit and who works for a state agency under a formal written contract for less than 12 months each year. The individual accrues 12 months of credit each year if the individual is constantly under contract during the months the individual does not work. The individual is constantly under contract if the individual's contract for the next work period is entered into before the end of the existing work period, even though the individual will not work during the interim period.

Accrual of Lifetime Service Credit For Certain Military Service

If an individual left a position that accrued lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and if the individual was reemployed with the state after completing that service in accordance with any applicable federal or state veterans' reemployment law, then the individual accrued lifetime service credit during that service.

Calculating Lifetime Service Credit

A state employee's effective service date is the starting point for determining the amount of the employee's lifetime service credit. The amount of an employee's lifetime service credit at any given point is equal to the number of months (not calendar months) that have elapsed since the employee's effective service date. A month begins on the same day each month as the effective service date and ends on the day before that day during the next month. For example, assume an employee's effective service date is August 5, 1985. For that employee, February 5, 2000, through March 4, 2000, would constitute a month of service credit (regardless of how many days are included in that month).

¹⁶Act of July 18, 1987, 70th Leg., 2nd C.S., ch. 57, § 2(b), 1987 Tex. Gen. Laws 190.

“Effective service date” is the first day of the employee’s current continuous employment with the state, as adjusted for any lifetime service credit accrued during previous employments and for any entire calendar months the employee took leave without pay during the current employment. For this purpose, an employee’s transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

The amount of lifetime service credit accrued by a state employee during previous employments must be expressed in terms of “number of days served.” “Number of days served” is determined by counting each day of service. The employee gets one full day of credit for any part of a day served. Do not count the number of days in any full calendar month that the employee was on leave without pay. Count all days served in all previous periods of employment with the state.

Once the amount of lifetime service credit accrued during previous employments has been determined in terms of “number of days served,” the amount is used to determine the employee’s “effective service date.” This is done by counting backwards from the first day of the employee’s current continuous employment with the state. For example, assume an employee accrued 2154 days of lifetime service credit during previous employments. Also assume that the first day of the employee’s current continuous employment was August 5, 1985. Counting back 2154 days would yield an effective service date of September 12, 1979.

The state agency that is currently employing a state employee who accrued lifetime service credit during previous employments may verify the amount of that credit by either contacting each previous employer or simply accepting the amount of credit shown on the records of the last state agency that employed the employee.

If a state agency that currently employs a state employee chooses to accept the amount of lifetime service credit shown for the employee on the records of the last state agency that employed the employee, then the supporting documentation in the current employer’s records must contain a signed statement from the last agency specifying the amount of lifetime service credit for the employee as shown on that agency’s records. The statement must provide the date of the signature.

If the state agency that previously employed a state employee no longer exists, then the current employing state agency may accept any reasonable evidence of the amount of lifetime service credit accrued by the employee while working for the defunct agency. The evidence may include data from retirement systems, personnel action forms, statements from the employee, payroll records, pay stubs, statements from others with knowledge about the employee’s duties while working for the agency, and information from the records of any legal successor to the agency.

Lump Sum Payments of Accrued Vacation Time

Applies to:

Each state agency.

Sources:

TEX. GOV'T CODE ANN. §§ 661.061-661.067, 661.091-661.094
(Vernon 1994 & Supp. 2000).

Discussion:

The following is derived from the policy document to amend the Comptroller's current administrative rule about payroll requirements, which may be found at 34 Tex. Admin Code § 5.41 (1999).² Because the amendments have not yet been adopted, the following is not yet in effect as a formal rule.

The Comptroller's legal authority to adopt rules concerning lump sum payments of accrued vacation time is TEX. GOV'T CODE ANN. §§ 661.068, 661.094 (Vernon Supp. 2000). The rules implement Subchapters C and D of Chapter 661, Government Code.

Definitions

For the purposes of lump sum payments of accrued vacation time, the following definitions apply:

- **Calendar month** means the period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.
- **National holiday** includes only those days listed under TEX. GOV'T CODE ANN. § 662.003(a) (Vernon Supp. 2000). The term does not include a national holiday on which a state employee is not entitled to a paid day off from work under TEX. GOV'T CODE ANN. § 662.005 (Vernon Supp. 2000).
- **State employee** means an employee or appointed officer of a state agency. The term includes:
 - A full-time or part-time employee or officer; or
 - An hourly employee; or
 - A temporary state employee; or
 - An individual employed by the Teacher Retirement System of Texas, the Texas Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District, or the Texas Rehabilitation Commission; or
 - A classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accrued vacation time during the employment.

²The main text includes changes made to the law by the Texas legislature during its 76th regular session in 1999.

- **State holiday** includes only those days listed under TEX. GOV'T CODE ANN. § 662.003(b) (Vernon Supp. 2000). The term does not include a state holiday on which a state employee is not entitled to a paid day off from work under Section 662.005, Government Code.
- **Temporary state employee** means a state employee who is hired to provide services to a state agency for a limited time. The term includes a retiree of a state retirement system who is hired by a state agency to work as a state employee less than the maximum time the retiree may work each fiscal year to avoid suspension of the retiree's retirement annuity and a seasonal employee. The term does not include an independent contractor or the employee or independent contractor of an independent contractor.
- **Workday** means any day except Saturday and Sunday. The term includes a state or national holiday.

Employees of the Legislative Branch

A payment for accrued vacation leave to an employee of the legislative branch, including an employee of the lieutenant governor, is determined as follows:

- For employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and
- For employees of a legislative agency, by the administrative head of the agency.

Entitlement to Payment

A state employee is entitled to be paid for the accrued balance of the employee's vacation time if:

- The employee resigns, is dismissed, or otherwise separates from state employment; and
- The employee has accrued six months of continuous state employment at any time during the employee's lifetime; and
- The employee is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period following the effective date of the employee's separation from state employment.

Continuous state employment means employment with the state that is not interrupted by a period when a state employee is not being paid a regular state salary. The period when an employee is on leave without pay or leave of absence without pay is not an interruption that would require the period of continuous state employment to begin again. A leave period, however, that covers one or more entire calendar months does not count toward fulfilling the six month requirement.

A state employee who holds at least two positions and separates from one that accrues vacation time is entitled and eligible to be paid only for the vacation time credited to the position from which the employee separates.

A payment of accrued vacation time to a state employee must be made in a lump sum unless the employee is remaining on the payroll to exhaust that time.

Individuals Not Entitled and Not Eligible to Receive Payment

An individual is not entitled and is not eligible to receive a lump sum payment of accrued vacation time if the individual at the time of separation from state employment:

- Held an office that is normally filled by vote of the people; or
- Was an independent contractor or an employee of an independent contractor; or
- Was an operator of equipment or a driver of a team whose wages were included in the rental paid by a state agency to the owner of the equipment or team; or
- Was employed on a piecework basis; or
- Was covered by the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two; or
- Was covered by the Teacher Retirement System of Texas, unless the individual was:
 - Employed by the Teacher Retirement System of Texas, the Texas Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District, or the Texas Rehabilitation Commission; or
- A classified, administrative, faculty, or professional employee of a state institution or agency of higher education who accrued vacation time during the employment.

Separation From State Employment

A separation from state employment includes a separation in which a state employee:

- Leaves one state agency to begin working for another state agency, if the effective date of the employee's employment at the second state agency is at least 31 days after the effective date of the employee's termination at the first state agency; or

- Moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time; or
- Moves from a position in a state agency that accrues vacation time to a position in another agency that does not accrue vacation time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or
- Moves from a position in a state agency that does not accrue vacation time to a position in another state agency that does not accrue vacation time, if the other state agency is not authorized or refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or
- Holds at least two positions and separates from one that accrues vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time; or
- Retires while a contributing member of the Employees Retirement System of Texas (ERS).

Responsibility for Making the Payment

The state agency that employed a state employee immediately before the employee separated from state employment is responsible for making the lump sum payment of vacation time to the employee. This responsibility exists even if the employee, immediately before separation, was employed by the agency in a position that did not accrue vacation time.

Computation of the Payment

General Requirements

If a state employee's accrued vacation time is allocated over only one month, then the amount of a lump sum payment for that time is equal to the product of:

- The number of hours of the accrued vacation time; and
- The applicable rate of compensation of the employee, which must be expressed as an hourly rate.

If a state employee's accrued vacation time is allocated over more than one month, then the amount of a lump sum payment for that time is equal to the sum of the amounts attributed to each month included in the allocation. The amount attributed to a particular month included in the allocation is equal to the product of:

- The number of hours of the employee's accrued vacation time that is allocated to that month; and
- The applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

Hours of Vacation Time

The balance of a state employee's accrued vacation time must be allocated over the workdays following the effective date and time of the employee's separation from state employment until the accrued vacation time is completely allocated. If the employee, on the effective date of separation, was normally scheduled to work at least 40 hours a week, then each workday consists of eight hours. If the employee, on the effective date of separation, was normally scheduled to work fewer than 40 hours a week, then each workday consists of the number of hours the employee was normally scheduled to work each week on the date of separation divided by five.

This paragraph applies to a state employee who, on the effective date of separation from state employment, was normally scheduled to work at least 40 hours a week. Eight hours must be added to the employee's accrued vacation time for each state or national holiday that occurs during the period over which the time is allocated.

This paragraph applies to a state employee who, on the effective date of separation from state employment, was normally scheduled to work fewer than 40 hours a week. A specified number of hours must be added to the employee's accrued vacation time for each state or national holiday that occurs during the period over which the time is allocated. The number of hours added for each holiday is equal to the product of:

- Eight hours; and
- The percentage of 40 hours that the employee was normally scheduled to work each week on the date of separation.

If a state employee is entitled to a lump sum payment of accrued vacation time because the employee's separation from state employment involves a move to a position in a state agency that does not accrue vacation time, then no hours may be added to the employee's accrued vacation time for a state or national holiday that occurs during the period over which the time is allocated.

This paragraph prevails over the second and third paragraphs of this section about hours of vacation time.

Applicable Rate of Compensation

Except as stated in this paragraph, the applicable rate of compensation when computing a lump sum payment of vacation time to a state employee is the employee's rate of compensation on the date of separation from state employment. The applicable rate of compensation of an employee who separates from state employment while holding a position that does not accrue vacation time is the employee's final rate of compensation in the last position held by the employee that accrued vacation time.

A state employee's rate of compensation includes base pay plus any emolument or stipend provided as a salary supplement. A special item of compensation (such as housing, utilities, clothing, and cleaning) may not be included in the employee's rate of compensation unless it was provided in lieu of base pay. The amount of BRP included must be determined in accordance with the Comptroller's requirements. Neither longevity pay nor hazardous duty pay may be included in the employee's rate of compensation.

This paragraph applies only to a state employee who was not an hourly employee immediately before separation from state employment. The employee's rate of compensation must be expressed as an hourly rate for each month or part of a month included in the allocation of the employee's accrued vacation time. The hourly rate of compensation for a particular month is equal to a quotient, the numerator of which is the rate of compensation and the denominator of which is the number of working hours the employee would have normally been scheduled to work during the month had separation from state employment not occurred. The number of working hours in a month will vary from month to month, depending on the number of workdays in the month.

Agreement to Remain on the Payroll

A state agency and a state employee who is entitled to receive a lump sum payment of accrued vacation time from the agency may mutually agree for the employee to remain on the agency's payroll to exhaust that time instead of receiving the lump sum payment. The lump sum payment must occur if either party does not agree.

A state employee who remains on the payroll of a state agency is entitled to continue receiving all compensation and benefits that the employee was receiving on the last day of duty, including paid holidays, longevity pay, and hazardous duty pay. The employee is also entitled to any general salary increase for state employees that takes effect before the employee's accrued vacation time is exhausted. The employee may not use sick leave or accrue sick leave or vacation time while remaining on the payroll.

Payroll Details

The payroll detail submitted with a payroll voucher to make a lump sum payment for accrued vacation time to a state employee must include:

- The employee's rate of pay on the effective date of separation from state employment; and
- The effective date of separation from state employment; and
- The number of days and hours of accrued vacation time, not including hours for authorized national and state holidays

Appropriation Year Determination

A state agency must charge a lump sum payment of accrued vacation time to an appropriation that may be used to pay compensation. The payment must be charged to the appropriation year in which the state employee's separation from state employment becomes effective.

Tax and Retirement Withholding from Payments

A lump sum payment of accrued vacation time is subject to federal income tax withholding and withholding under the Federal Insurance Contributions Act. The payment:

- Is not subject to deductions for employee retirement contributions to the optional retirement program or the Teacher Retirement System of Texas; and
- According to the Employees Retirement System of Texas, is not subject to deductions for employee contributions to that system.

Exhibit 3.3 – Example 1 of Computation of Lump Sum Payment of Accrued Vacation Time

Annual Applicable Rate of Compensation:	\$28,488.00
Monthly Applicable Rate of Compensation:	\$ 2,374.00
Effective Date of Termination:	Close of Business on June 30, 2000
Employee Type:	Full-Time (40 hours/week)
Vacation Time Balance:	336 Hours
Workdays/Working Hours:	July: 21 Workdays (168 Working Hours) August: 23 Workdays (184 Working Hours)

1 Because the employee's vacation time balance is sufficient to pay for the entire month of July, no computation of a dollar amount is necessary for that month. The employee receives an entire month's salary for the month (\$2,374.00).

2 The number of working hours in July is subtracted from the employee's beginning vacation time balance. Eight hours is added to that balance because the July 4th national holiday falls on a workday. (See the definition of "workday," above.)

Original vacation time balance:	336 hours
Plus: July 4th holiday	8 hours
Less: Number of working hours in July	-168 hours
Equals: Balance to carry forward to August	<u>176 hours</u>

3 August involves payment for a partial month because the number of vacation time hours carried forward to August is less than the number of working hours in August. Therefore, compute an hourly rate of pay to multiply against the vacation time balance carried forward from July.

Monthly applicable rate of compensation:	\$2,374.00
Divided by:	<u>184 working hours</u>
Equals hourly rate:	<u>\$12.9021/hour</u>

4 The agency must add 8 hours to the employee's vacation time balance for each holiday that occurs during the period over which the balance is allocated, but only if the holiday occurs in August and on a workday. There are no holidays in August 2000 because the only possible holiday, August 27th, falls on a Sunday. Sunday is not a workday. Therefore, 176 is the number of vacation hours to be allocated in August 2000.

5 The amount paid to the employee for vacation time allocated in August 2000 is:

$$\$12.9021/\text{hour} \times 176 \text{ hours} = \$2,270.77.$$

6 Total Gross Lump Sum:

July:	\$2,374.00
August:	<u>\$2,270.77</u>
Total Gross:	<u>\$4,644.77</u>

Exhibit 3.4 – Example 2 of Computation of Lump Sum Payment of Accrued Vacation Time

Annual Applicable Rate of Compensation:	\$17,532.00
Monthly Applicable Rate of Compensation:	\$ 1,461.00
Effective Date of Termination:	Close of Business on May 26, 2000
Employee Type:	Full-Time (40 hours/week)
Vacation Time Balance:	116 Hours
Workdays/ Working Hours:	May: 23 Workdays (184 Working Hours) June: 22 Workdays (176 Working Hours)

- The employee is entitled to be paid for the Memorial Day holiday that occurs on May 29, 2000. The payment for that holiday is classified as regular salary, not as part of the employee's lump sum vacation time payment. That holiday must be ignored when allocating the employee's vacation time over the workdays following the effective date and time of the employee's termination. In addition, no hours may be added to the employee's accrued vacation time for that holiday.
- The employee's vacation time balance is allocated over two workdays in May. Therefore, compute an hourly rate of pay for May to multiply against the vacation time balance allocated to May:

Monthly applicable rate of compensation:	\$1,461.00
Divided by:	<u>184</u> working hours
Equals hourly rate:	<u>\$7.9402</u> hour
- The amount paid to the employee for vacation time allocated in May 2000 is:

$$\$7.9402/\text{hour} \times 16 \text{ hours} = \$127.04.$$
- The number of working hours in May that is used to compute the amount of the vacation time payment for May is subtracted from the employee's beginning vacation time balance.

Original vacation time balance:	116 hours
Plus: Holidays in May	+ 0 hours
Less: Number of working hours in May	- <u>16</u> hours
Equals: Balance to carry forward to June	<u>100</u> hours
- June involves payment for a partial month because the number of vacation time hours carried forward to June is less than the number of working hours in June. Therefore, compute an hourly rate of pay to multiply against the vacation time balance carried forward from May.

Monthly applicable rate of compensation:	\$1,461.00
Divided by:	<u>176</u> working hours
Equals hourly rate:	<u>\$8.3011/hour</u>
- The agency must add 8 hours to the employee's vacation time balance for each holiday that occurs during the period over which the balance is allocated, but only if the holiday occurs in June and on a workday. There is one holiday in June 2000, which falls on the last day of the allocation period (June 19th). Because of this holiday, 8 hours must be added to the vacation time balance carried forward from May. Therefore, 108 is the number of vacation hours to be allocated in June 2000.
- The amount paid to the employee for vacation time allocated in June 2000 is:

$$\$8.3011/\text{hour} \times 108 \text{ hours} = \$896.52.$$
- Total Gross Lump Sum:

May:	\$127.04
June:	<u>\$896.52</u>
Total Gross:	<u>\$1,023.56</u>

Lump Sum Payments of Accrued Vacation and Sick Leave Upon Death of State Employees

Applies to:

Each state agency.

Sources:

TEX. GOV'T CODE ANN. §§ 661.031-661.038 (Vernon 1994 & Supp. 2000).

Discussion:

The following is derived from the policy document to amend the Comptroller's current administrative rule about payroll requirements, which may be found at 34 TEX. ADMIN. CODE § 5.41 (1999).³ Because the amendments have not yet been adopted, the following is not yet in effect as a formal rule.

The Comptroller's legal authority to adopt rules concerning lump sum payments of accrued vacation and sick leave upon the death of state employees is TEX. GOV'T CODE ANN. § 661.038 (Vernon Supp. 2000). The purpose of the rules is to implement Subchapter B of Chapter 661, Government Code.

Definitions

The following definitions apply for purposes of lump sum payment of vacation and sick leave upon the death of state employees:

- **Calendar month** means the period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.
- **National holiday** includes only those days listed under TEX. GOV'T CODE ANN. § 662.003(a) (Vernon Supp. 2000). The term does not include a national holiday on which a state employee is not entitled to a paid day off from work under TEX. GOV'T CODE ANN. § 662.005 (Vernon Supp. 2000).
- **State employee** means an individual who is an appointed officer or employee of a state agency and who normally works at least 900 hours per year. The term includes:
 - An hourly employee; and
 - A temporary state employee; and
 - An individual employed by the Teacher Retirement System of Texas, the Texas Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District, or the Texas Rehabilitation Commission; or

³The main text includes changes made to the law by the Texas legislature during its 76th regular session in 1999.

- A classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accrued vacation leave, sick leave, or both, during the employment.
- **State holiday** includes only those days listed under TEX. GOV'T CODE ANN. § 662.003(b) (Vernon Supp. 2000). The term does not include a state holiday on which a state employee is not entitled to a paid day off from work under Section 662.005, Government Code.
- **Temporary state employee** means a state employee who is hired to provide services to a state agency for a limited time. The term includes a retiree of a state retirement system who is hired by a state agency to work as a state employee less than the maximum time the retiree may work each fiscal year to avoid suspension of the retiree's retirement annuity and a seasonal employee. The term does not include an independent contractor or the employee or independent contractor of an independent contractor.
- **Workday** means any day except Saturday and Sunday. The term includes a state or national holiday.

Entitlement to Payment

The estate of a deceased state employee is entitled to be paid for the balance of the employee's vacation leave. In addition, the estate is entitled to be paid for one-half of the balance of the employee's sick leave, not to exceed 336 hours. These entitlements are contingent on the employee having accrued six months of continuous state employment at any time during the employee's lifetime.

- **Continuous state employment** means employment with the state that is not interrupted by a period when a state employee is not being paid a regular state salary. The period when an employee is on leave without pay or leave of absence without pay is not an interruption that would require the period of continuous state employment to begin again. A leave period, however, that covers one or more entire calendar months does not count toward fulfilling the six month requirement.

Estates not Entitled and not Eligible to Receive Payment

The estate of a deceased individual is not entitled and is not eligible to receive a lump sum payment of accrued vacation and sick leave if the individual at the time of death:

- Held an office that is normally filled by vote of the people; or
- Was an independent contractor or an employee of an independent contractor; or
- Was an operator of equipment or a driver of a team whose wages were included in the rental paid by a state agency to the owner of the equipment or team; or

- Was employed on a piecework basis; or
- Was covered by the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two; or
- Was covered by the Teacher Retirement System of Texas (TRS), unless the individual was:
 - Employed by TRS, the Texas Education Agency, the Texas Higher Education Coordinating Board, the Texas National Research Laboratory Commission, the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, the Texas Youth Commission, the Windham School District, or the Texas Rehabilitation Commission; or
 - A classified, administrative, faculty, or professional employee of a state institution or agency of higher education who accrued vacation leave or sick leave, or both, during the employment.

Responsibility for Making the Payment

The state agency that employed a state employee immediately before the employee's death is responsible for making the lump sum payment of vacation and sick leave to the employee's estate. This responsibility exists even if the employee, immediately before death, was employed by the agency in a position that did not accrue vacation leave or sick leave, or both.

Computation of the Payment

General Requirements

When computing the amount of a lump sum payment of vacation and sick leave, the first step is to add one-half of the deceased employee's sick leave balance, not to exceed 336 hours, to the deceased employee's vacation leave balance. This gives the deceased employee's total leave balance.

If a deceased state employee's total leave balance is allocated over only one month, then the amount of a lump sum payment for that balance is equal to the product of:

- The number of hours of the balance, and
- The applicable rate of compensation of the employee, which must be expressed as an hourly rate.

If a deceased state employee's total leave balance is allocated over more than one month, then the amount of a lump sum payment for that balance is equal to the sum of the amounts attributed to each month included in the allocation. The amount attributed to a particular month included in the allocation is equal to the product of:

- The number of hours of the total leave balance that is allocated to that month, and
- The applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

Hours of Leave Time

A deceased state employee's total leave balance must be allocated over the workdays following the date and time of the employee's death until the balance is completely allocated. If the employee, on the date of death, was normally scheduled to work at least 40 hours a week, then each workday consists of eight hours. If the employee, on the date of death, was normally scheduled to work fewer than 40 hours a week, then each workday consists of the number of hours the employee was normally scheduled to work each week on the date of death divided by five.

This paragraph applies to a state employee who, on the date of death, was normally scheduled to work at least 40 hours a week. Eight hours must be added to the employee's total leave balance for each state or national holiday that occurs during the period over which the balance is allocated.

This paragraph applies to a state employee who, on the date of death, was normally scheduled to work fewer than 40 hours a week. A specified number of hours must be added to the employee's total leave balance for each state or national holiday that occurs during the period over which the balance is allocated. The number of hours added for each holiday is equal to the product of: (1) eight hours, and (2) the percentage of 40 hours that the employee was normally scheduled to work each week on the date of death.

Applicable Rate of Compensation

The applicable rate of compensation when computing a lump sum payment of vacation and sick leave to a deceased state employee's estate is the employee's rate of compensation on the date of death.

A state employee's rate of compensation includes base pay plus any emolument or stipend provided as a salary supplement. A special item of compensation (such as housing, utilities, clothing, and cleaning) may not be included in the employee's rate of compensation unless it was provided in lieu of base pay. Neither longevity pay nor hazardous duty pay may be included in the employee's rate of compensation.

This paragraph applies only to a state employee who was not an hourly employee immediately before death. The employee's rate of compensation must be expressed as an hourly rate for each month or part of a month included in the allocation of the employee's total leave balance. The hourly rate of compensation for a particular month is equal to the quotient of:

- The rate of compensation; divided by
- The number of working hours the employee would have normally been scheduled to work during the month had death not occurred. The number of working hours in a month will vary from month to month, depending on the number of workdays in the month.

This paragraph applies to a state employee who, on the date of death, was normally scheduled to work for a state agency fewer than 12 months during a fiscal year but who agreed for the agency to pay the compensation earned during that work period over 12 months. The employee's applicable rate of compensation must be based on the amount of compensation earned each month the employee worked, not on the amount of compensation paid to the employee each month of the year.

Payroll Details

The payroll detail submitted with a payroll voucher to make a lump sum payment of accrued vacation and sick leave to the estate of a deceased state employee must include:

- The employee's rate of pay at the time of death; and
- The date of death; and
- The number of days and hours of accrued vacation time, not including hours for authorized national and state holidays; and
- The number of days and hours of accrued sick leave, which must be the number before application of the 336 hour limit on the number of sick leave hours that may be paid.

Appropriation Year Determination

A state agency must charge a lump sum payment of accrued vacation and sick leave to an appropriation that may be used to pay compensation. The payment must be charged to the appropriation year in which the state employee's death occurred.

Retirement Withholding From Payments

A lump sum payment of accrued vacation and sick leave upon the death of a state employee:

- Is not subject to deductions for employee retirement contributions to the optional retirement program or the Teacher Retirement System of Texas; and
- According to the Employees Retirement System of Texas, is not subject to deductions for employee retirement contributions to that system.

Tax Withholding from the Sick Leave Portion

The sick leave portion of a lump sum payment of accrued vacation and sick leave upon the death of a state employee is not subject to federal income tax withholding or withholding under the Federal Insurance Contributions Act (FICA).

Tax Withholding from the Vacation Leave Portion

The vacation leave portion of a lump sum payment of accrued vacation leave and sick leave upon the death of a state employee:

- Is not subject to federal income tax withholding;
- Is subject to withholding under FICA if the payment occurs during the calendar year of the employee's death; and
- Is not subject to withholding under FICA if the payment occurs after the calendar year of the employee's death.

Maximum Security Unit and Specialized Behavioral Management Unit Salaries

Applies to:

Texas Department of Mental Health and Mental Retardation (TDMHMR).

Source:

Rider 10 in the appropriations to the Department of Mental Health and Mental Retardation in the General Appropriations Act (GAA).

Discussion:

As an exception to the general provisions of the GAA governing the salary rates of classified positions, TDMHMR may use the funds appropriated by the GAA to pay employees working in designated maximum security units or designated specialized behavioral management units up to a two step increase over those salary rates provided by the general provisions.

Meal Expenses Incurred During Non-Overnight Travel, Reimbursement of

Applies to:

- A. Each state agency that uses appropriated funds to pay or reimburse a travel expense of a state employee, the Teacher Retirement System of Texas (TRS), or the Employees Retirement System of Texas (ERS).
- B. Each state agency or institution of higher education.

Sources:

- A. TEX. GOV'T CODE ANN. §§ 660.002(1), (4), (7), (11)-(12), (19)-(22), 660.003(b)-(c), (f), 660.004(a), 660.113(d), 815.208(e) (Vernon Supp. 2000).
- B. I.R.C. § 162(a)(2); United States v. Correll, 88 S.Ct. 445 (1967); Treas. Reg. §§ 1.62-2(c)(5), 31.3121(a)-3(b)(2), 31.3401(a)-4(b)(2); I.R.S. Announcement 90-127, 1990-48 I.R.B. 8. See, generally, Rev. Rul. 75-279, 1975-2 C.B.; Rev. Rul. 75-170, 1975-1 C.B. 60; Rev. Rul. 75-168, 1975-1 C.B. 58.

Discussion:

- A. A state agency may reimburse a state employee for a meal expense incurred while traveling without an overnight stay away from the employee's designated headquarters only if the agency's chief administrator authorizes the reimbursement. This restriction does not apply: (1) to the extent an institution of higher education reimburses the expense from institutional funds; or (2) to the extent a state agency (other than TRS or ERS) uses funds that are not appropriated funds to reimburse

the expense; or (3) to the extent necessary to avoid conflict with an applicable federal law or regulation; or (4) to the extent that the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties. Please consult the *State of Texas Travel Allowance Guide* for more information.

For the purpose of the preceding paragraph:

- **Appropriated funds** means funds appropriated under the General Appropriations Act.
- **Chief administrator of a state agency** has the meaning assigned by TEX. GOV'T CODE ANN. § 660.002(4) (Vernon Supp. 2000).
- **Designated headquarters** has the meaning assigned by TEX. GOV'T CODE ANN. § 660.002(7) (Vernon Supp. 2000).
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **Institutional funds** has the meaning assigned by TEX. EDUC. CODE ANN. § 51.009 (Vernon 1996).
- **State agency** means: (1) a unit of state government that uses appropriated funds to pay or reimburse a travel expense of a state employee; or (2) TRS; or (3) ERS.
- **State employee** has the meaning assigned by TEX. GOV'T CODE ANN. § 660.002(20) (Vernon Supp. 2000).
- **Travel expense** means a meal, lodging, transportation, or incidental expense.
- **Unit of state government** includes an institution of higher education.

- B. Each employer should determine whether the amount of a meal expense reimbursement to an employee must be considered when calculating the employer's and employee's federal tax obligations.

As background, the Internal Revenue Service (IRS) has consistently said that a meal expense incurred by an employee is deductible only if the employee's duties require the employee to be away from home for a period substantially longer than an ordinary day's work and, during free time while away from home, it is reasonable for the employee to need and get sleep or rest to meet the demands of those duties. The IRS said in 1990:

[A]ssume that a payor ... pays per diem allowances to its employees for meal ... expenses (1) for travel away from home that requires sleep or rest ("overnight payments"), and (2) for travel that does not require sleep or rest ("non-overnight payments"). ... Viewed separately, the portion ... providing the overnight payments ... will be treated as paid under an accountable plan. Viewed separately, the portion ... providing the nonovernight payments does not meet the business connection requirement of [the regulations] ... and, therefore, will be treated as paid under a nonaccountable plan. Accordingly, the payor must treat the nonovernight payments as wages or other compensation (i.e., report the payments as wages or other compensation on the employee's Form W-2 and withhold and pay employment taxes on the payments).

* * * *

The Service reminds payors of payments under a reimbursement or other expense allowance arrangement that the obligation to withhold and pay employment taxes on amounts paid under a nonaccountable plan ... became effective for payments received by employees on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990.

The following applies only if an employer determines that a meal expense reimbursement must be considered when determining the employer's and employee's federal tax obligations. The employer may ensure that the reimbursement is considered by following either of two alternatives.

Alternative 1: Withhold Additional Federal Income and FICA Taxes From the Employee's Paycheck.

The amount of the meal expense reimbursement is added to the employee's taxable gross amount before calculating income tax and FICA withholding.

Note: The employee's gross salary amount is not affected. The amount of net compensation paid to the employee, however is reduced by the amount of the additional taxes withheld.

The tax deposit requirements of the Internal Revenue Service (IRS) may impact whether and when an employer implements this alternative. To comply with those requirements, an employer may need to link the meal expense reimbursement to payment of the employee's regular salary.

Alternative 2: Reimburse the Meal Expense Separately on a Supplemental Payroll Voucher.

The meal expense is submitted separately on a payroll voucher. No other type of payroll item may be included on that voucher.

Note: If this alternative is used, two separate travel voucher/forms may need to be completed by the employee. One form would list the employee's travel expenses except for the meal expense. The other form would list only the employee's meal expense.

Please note that the requirements of the *State of Texas Travel Allowance Guide* apply to the meal expense reimbursement, even if the reimbursement is paid on a separate payroll voucher. The Comptroller object codes associated with a non-overnight meal expense must be used on the payroll voucher to ensure that travel-related payments are recorded correctly.

Medical Services Trust Fund, Use of

Applies to:

Texas Department of Health’s South Texas Hospital (STH);
Texas Department of Health’s Texas Center for Infectious
Disease (TCID).

Sources:

Tex. Health & Safety Code Ann. § 13.008 (Vernon Supp. 2000);
Rider 33(a) in the appropriations to the Department of Health in
the General Appropriations Act.

Discussion:

The medical services trust fund shall be used for supplementing
the salaries of medical staff at STH and TCID. In addition, the
fund may be used to supplement salaries of nurses and other
medical personnel at STH and TCID.

Hospital directors of STH and TCID may receive a house,
utilities, and supplement from the Texas Department of
Health’s medical services trust fund.

Overtime

Applies to:

- A. Each employee who is subject to the overtime provisions of
the Fair Labor Standards Act of 1938 (FLSA), other than an
employee of the legislature, an employee of the lieutenant
governor, or an employee of a legislative agency.
- B. Each employee of the legislature, of the lieutenant governor,
or of a legislative agency.

Sources:

- A. 29 U.S.C. § 207(e); TEX. GOV’T CODE ANN. § 659.015(a)-(g)
(Vernon Supp. 2000); TEX. GOV’T CODE ANN. §§ 666.001(a),
666.006(a)-(b) (Vernon Supp. 2000), as added by Act of May
11, 1999, 76th Leg., R.S., ch. 279, § 25, 1999 Tex. Gen. Laws
1147, 1166-7; 29 C.F.R. §§ 548.2, 548.3, 548.200(a),
553.27(a)-(c), 778.106, 778.113(b), 778.115, 778.116,
778.207(b), 778.208, 778.209, 778.211, 778.419 (1999).
- B. TEX. GOV’T CODE ANN. § 659.017 (Vernon Supp. 2000).

Discussion:

- A. The following discussion applies only to an employee who is
subject to the overtime provisions of the FLSA. The following
does not apply to an employee of the legislature, an
employee of the lieutenant governor, or an employee of a
legislative agency.

General Requirements

An employee is entitled to compensation for overtime as provided by federal and state law. To the extent that federal law conflicts with state law, federal law controls without regard to whether federal law prescribes a stricter rule.⁴

State law says that an employee who is required to work hours in excess of 40 hours in a workweek⁵ is entitled to compensation for the excess hours either by:

- The agency allowing or requiring the employee to take compensatory time off at the rate of 1.5 hours for each hour of overtime;⁶ or
- at the discretion⁷ of the employing agency, in cases in which granting compensatory time off is impractical, the employee receiving pay for the overtime at the rate of 1.5 times the employee's regular rate of pay.

Holidays or other paid leave taken during a workweek are not counted as hours worked in computing the number of overtime hours.

With certain exceptions, an employee may not accumulate more than 240 hours of overtime credit that may be taken as compensatory leave. An employee engaged in a public safety activity, an emergency response activity, or a seasonal activity may accumulate not more than 480 hours of overtime credit that may be taken as compensatory leave if the accumulation does not violate 29 U.S.C. § 207(o)(3)(A). In this paragraph, **overtime credit** means the number of hours that is computed by multiplying the number of overtime hours by 1.5.

An employee must be paid for the number of overtime hours the employee works that causes the employee to exceed the amount of overtime credit the employee may accumulate. The payment must be at 1.5 times the employee's regular rate of pay.

This paragraph applies only to an employee who does not work more than 40 hours in a workweek. If the number of hours worked plus the number of hours of holiday or other paid leave taken during the workweek exceeds 40 hours, the employee is entitled to compensatory time off at the rate of one hour off for each of the excess hours.

⁴The main text does not attempt to resolve any conflicts between state and federal law regarding overtime. Any state law on an overtime topic covered in this guide is discussed in the main text without regard to any applicable federal law or regulation. If there is only a federal law or regulation on an overtime topic covered in this guide, that law or regulation is discussed in the main text. Obviously, each employing state agency or institution of higher education must ensure its compliance with all applicable federal laws and regulations.

⁵See 29 C.F.R. § 778.105 (1999) (meaning of “workweek”).

⁶See 29 C.F.R. § 553.25(b)-(c) (1999).

⁷Compare 29 C.F.R. § 553.23(a), (c) (1999).

This paragraph applies only to an employee who works more than 40 hours in a workweek. The employee is entitled to compensatory time off at the rate of one hour for each hour remaining after subtracting the hours compensable under paragraphs (3)-(5), above, from the sum of the number of hours worked plus the number of hours of holiday or other paid leave taken during the workweek.

Any compensatory time that is computed on an hour-for-hour basis instead of a 1.5 hours-for-each-hour basis must be taken during the 12-month period following the end of the workweek in which the compensatory time was accrued. The compensatory time lapses if the time is neither taken nor paid in accordance with Texas law.

This paragraph applies only to a person who is employed by more than one state agency or institution of higher education. Overtime compensation accrues for each employment independently of every other employment except as discussed in this paragraph. If the person is subject to the overtime provisions of the FLSA in an employment, the employing agencies and institutions of higher education shall ensure that the person is compensated for all combined time actually worked that exceeds 40 hours per week in accordance with those provisions. The agencies and institutions shall cooperate to determine which agency or institution is responsible for ensuring compliance with this requirement.

Payroll Requirements

In addition to the normal payroll requirements specified in Chapter 1 of this guide, payrolls containing overtime payments must supply the following information on the Payroll Detail Sheet:

- Monthly salary;
- Any other entitlement to be included in the computation
- Total salary; and
- Number of hours to be paid.

Comptroller object 7021 is the applicable expenditure code for overtime payments.

Calculating the Amount of Overtime Pay

Weekly Versus Monthly Calculation

When calculating the hourly pay rate to be used for overtime payments for a non-exempt monthly salaried employee, an employer normally must use the weekly method: multiply the monthly salary by 12 months, divide by 52 weeks, and then divide by the number of hours in a week that the employee is expected to work to earn a full salary.

An employer may calculate the hourly salary rate by dividing the monthly salary by the number of work hours in the month, if the employer obtains the employee's consent to this method *before* work is performed. Employers cannot unilaterally require this method to be used.

Effect of Multiple Positions on the Calculation

When an employee, in a single work week, works in two or more positions for which different non-overtime rates of pay have been established, the employee's regular rate of pay for the week is the weighted average of the rates. The weighted average is computed by dividing the employee's total compensation for the week by the total number of hours worked. This method does not apply if an employer and an hourly employee have agreed in advance that the employee's overtime rate will be based on the pay rate for the type of work performed during the overtime hours.

Current Regular Rate of Pay Versus Regular Rate of Pay When Overtime Earned

An employer that chooses to pay an employee for overtime hours worked instead of banking the hours must use the regular rate of pay at the time the employee earned the overtime. However, an employer that waits to pay the overtime beyond what is reasonably necessary for the employer to compute and arrange for payment must treat the overtime as if it had been banked.

An employer that banks overtime hours and subsequently pays for those hours must use the employee's regular rate of pay at the time the employee receives the overtime payment. However, an employer that pays for overtime hours upon termination of employment must use the higher of the following regular rates of pay:

- The average regular rate of pay received by the employee during the last three years of employment; or
- The employee's final regular rate of pay.

The phrase **last three years of employment** means the 3-year period immediately before termination. Where an employee's last three years of employment are not continuous because of a break in service, the period of employment after the break is treated as new employment. The break, however, must have intended to be permanent, and any banked overtime must have been cashed out at the time of initial separation.

Whether Night/Evening/Weekend Shift Differential Pay Must be Included in the Regular Rate of Pay

Night/evening/weekend shift differential must be included in the regular hourly rate for calculation of overtime pay if an employee earns the overtime while working the night, evening, or weekend shift. If the employee is on a rotating shift, the overtime must be calculated for each period that the employee worked and the appropriate shift rate must be included in the calculation. For example, if an employee works the evening shift the second week of the month and the employee works overtime that week, the overtime pay rate must include the evening shift differential.

Whether Payments in the Form of Goods and Facilities Must be Included in the Regular Rate of Pay

When an employer makes a payment to an employee in the form of goods or facilities that are regarded as part of wages, then the reasonable cost to the employer or the fair value of the goods or of furnishing the facilities must be included in the employee's regular rate of pay.

Whether Other Types of Payments Must be Included in the Regular Rate of Pay

Longevity pay, hazardous duty pay, benefit replacement pay, housing emoluments, and other special payments must be included in the regular rate of pay for the calculation of overtime pay.

Whether Bonuses Must be Included in the Regular Rate of Pay

The FLSA says that the "regular rate" at which an employee is employed does not include sums paid in recognition of services performed during a given period if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly.

The Department of Labor has ruled that a discretionary bonus is excluded from the regular rate. For a bonus to be excluded, the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The amount of the bonus must be determined by the employer without promise or agreement. The employee must have no contract right, express or implied, to any amount. An employer that promises in advance to pay a bonus has abandoned the employer's discretion with regard to the bonus. For example, any bonus promised to an employee upon hiring would not be excluded from the regular rate. A bonus announced to employees to induce them to work more efficiently or to remain employed with the employer would be regarded as part of the regular rate. An attendance bonus or a bonus for quality and accuracy of work also is included in the regular rate.

When a bonus is considered part of an employee's regular rate of pay, no difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the employee's other earnings and the total divided by total hours worked. Under many bonus plans, however, calculations of the bonus are deferred over a period longer than a workweek. In that case, the employer may disregard the bonus when computing the employee's regular rate of pay until the amount of the bonus is ascertained. When the amount of the bonus is ascertained, the amount must be apportioned back over the workweeks of the period during which the bonus is said to have been earned. The employee must then receive an additional amount of compensation for each workweek that the employee worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

If it is impossible to allocate a bonus among the workweeks of the period in proportion to the amount of the bonus actually earned each week, some other reasonable and equitable method of allocation must be adopted. For example, it may be reasonable and equitable to assume that the employee earned an equal amount of bonus each week of the period to which the bonus relates. Or, if there are facts which make it inappropriate to assume equal bonus earnings for each workweek, it may be reasonable and equitable to assume that the employee earned an equal amount of the bonus each hour of the pay period.

The Comptroller believes that an information technology and recruitment bonus must be included in the regular rate of pay because this type of bonus is paid under a contract between an agency or institution of higher education and the recipient of the bonus. For the same reason, the Comptroller believes that a bonus awarded to year 2000 critical staff must be included in the regular rate of pay.

The Comptroller believes that a one-time merit payment is not included in the regular rate of pay because the payment satisfies the criteria for exclusion listed above. For the same reason, the Comptroller believes that a performance reward is not included in the regular rate of pay.

- B. Consistent with the requirements of the FLSA, overtime pay and compensatory time off for employees of the legislative branch, including employees of the lieutenant governor, are determined:
- For employees of the house of representatives or the senate, by the presiding officer of the appropriate house of the legislature; and
 - For employees of an elected officeholder, by the employing officeholder; and
 - For employees of a legislative agency, by the administrative head of the agency.

Performance Rewards

Applies to:

Each state agency that employs a person who holds a classified position.

Source:

Section 9-6.39(d) of the General Appropriations Act (GAA).

Discussion:

A qualified state agency may expend amounts necessary from funds appropriated in the GAA to enhance the compensation of employees who directly contributed to certain improvements by the agency. The purpose of the compensation enhancements is to:

- Foster, support, and reward outstanding performance, ongoing productivity improvements, and innovative improvement programs; and
- Retain key high performing employees.

Only an employee who holds a classified position is eligible for enhanced compensation. The amount of the enhancement may not exceed 6.8 percent of the employee's annual base pay.

A state agency qualifies for enhancing the compensation of its employees only if the agency satisfies the criteria specified in Section 9-6.39(d)(1)-(2) of the GAA.

Salary Adjustment

Applies to:

- A. Texas Youth Commission (TYC).
- B. Texas Department of Criminal Justice (TDCJ).

Sources:

- A. Rider 19 in the appropriations to the Youth Commission in the General Appropriations Act (GAA).
- B. Rider 11 in the appropriations to the Department of Criminal Justice in the GAA.

Discussion:

- A. TYC may adjust the salaries of juvenile correctional officers I-V to rates within the designated salary group for the purpose of recruiting, employing, and retaining career juvenile correctional personnel. A juvenile correctional officer who receives or is eligible to receive this adjustment is ineligible to receive a merit raise.
- B. TDCJ may adjust the salaries of correctional officers I-III and sergeants of correctional officers to rates within the designated salary group, not to exceed step 6, for the purpose of recruiting, employing, and retaining career correctional personnel. A person who receives or is eligible to receive this adjustment is ineligible to receive a merit raise.

Salary Schedule Equal to Salaries Paid by the Austin Independent School District

Applies to:

- A. Texas School for the Blind and Visually Impaired (TSBVI).
- B. Texas School for the Deaf (TSD).

Sources:

- A. TEX. EDUC. CODE ANN. § 30.024(b)(1) (Vernon Supp. 2000).
- B. TEX. EDUC. CODE ANN. § 30.055(b)(1) (Vernon Supp. 2000).

Discussion:

- A. The governing board of TSBVI may contract with any employee who provides, or supervises any employee who provides:

- Direct and regular educational services to students; or
- Other professional educational services.

An employee employed under this type of contract shall be paid in accordance with a salary structure adopted by TSBVI's superintendent with the concurrence of TSBVI's governing board. The structure must provide salaries equal, on a daily-rate basis, to salaries paid to employees employed in comparable positions by the Austin Independent School District (AISD).

- B. The governing board of TSD may contract with any employee who provides, or supervises any employee who provides:

- Direct and regular educational services to students; or
- Other professional, educational services.

An employee employed under this type of contract shall be paid in accordance with a salary structure adopted by TSD's superintendent with the concurrence of TSD's governing board. The structure must provide salaries equal, on a daily-rate basis, to salaries paid to employees employed in comparable positions by AISD.

Salary Schedule for Certain Employees of the Texas Youth Commission

Applies to:

Texas Youth Commission (TYC).

Sources:

TEX. EDUC. CODE ANN. § 30.102(b) (Vernon Supp. 2000); Tex. Att’y Gen. LO-97-10 (1997).

Discussion:

The following applies only to a person who is employed by TYC as:

- A classroom teacher; or
- A full-time librarian; or
- A full-time counselor certified under Subchapter B of Chapter 21, Education Code; or
- A full-time school nurse.

The person is entitled to receive as a minimum salary the monthly salary specified by TEX. EDUC. CODE ANN. § 21.402 (Vernon Supp. 2000). The person may be paid, from funds appropriated to TYC, a salary in excess of the minimum specified by Section 21.402. The salary, however, may not exceed the rate of pay for a similar position in the public schools of an adjacent school district. To ensure compliance with this maximum, longevity pay or benefit replacement pay, or both, may need to be reduced below the amount that otherwise would be paid.

Salary Supplement for Employees Working in Washington, D.C.

Applies to:

- A. Office of State-Federal Relations (OSFR) and any state agency or institution that assigns an employee to work permanently in the Washington, D.C. office of the OSFR.
- B. The Legislative Budget Board (LBB) and any other state agency that locates staff in Washington, D.C. to work under the supervision of OSFR’s director.

Sources:

- A. Rider 1 in the appropriations to the OSFR in the General Appropriations Act.
- B. TEX. GOV’T CODE ANN. § 751.001(2), (4) (Vernon 1994), § 751.012(a), (c)(4), (d) (Vernon Supp. 2000).

Discussion:

- A. The OSFR may pay a salary supplement not to exceed \$1,200 per month to each OSFR employee whose duty station is located in Washington, D.C.

Any state agency or institution that assigns an employee to work permanently in the Washington, D.C. office of the OSFR and designates that employee's duty station as Washington, D.C. may pay a salary supplement to the employee not to exceed \$1,200 per month.

If an employee so assigned works on less than a full-time basis, the maximum salary supplement shall be set on a proportionate basis.

- B. The OSFR shall enter into an interagency contract with the LBB and may enter into an interagency contract with another state agency to locate staff of the LBB or other agency in Washington, D.C. to work under the supervision of OSFR's director. The contract must provide that staff of the LBB or other agency receive a salary established by the state auditor in accordance with the next two sentences. The state auditor shall establish a salary schedule for state employees subject to a contract described above. The schedule shall include a standard cost-of-living adjustment to compensate an employee for the cost of living in Washington, D.C.

In the preceding paragraph, **state agency** means a state board, commission, department, including a state college or university.

Severance Pay

Applies to:

- A. Each state agency or institution of higher education.
- B. Each person licensed under the Texas Professional Social Work Act.
- C. Each person who makes a report of relevant information to the Texas State Board of Medical Examiners (TSBME) relating to the acts of a physician who poses a continuing threat to the public welfare through the practice of medicine.
- D. Each registered nurse.

Sources:

- A. TEX. CONST. ART. III, §§ 44, 51-53; Op. Tex. Att'y Gen. No. H-786 (1976). See Op. Tex. Att'y Gen. Nos. JM-1142 (1990), JM-887 (1988), JM-543 (1986), JM-406 (1985), MW-592 (1982), H-535 (1975), WW-1373 (1962).
- B. TEX. OCC. CODE ANN. § 505.451 (Vernon 2000) (italicized material, which was formerly codified at Sections 50.0225, 50.0226(2), 50.0227(b)-(c), (d)(1), Human Resources Code); Code Construction Act, TEX. GOV'T CODE ANN. §§ 311.002, 311.005(2) (Vernon 1998); Act of May 26, 1999, 76th Leg., R.S., ch. 1587, § 7(c), 1999 Tex. Gen. Laws 5441, 5445 (Senate Bill No. 1678).

- C. TEX. OCC. CODE ANN. §§ 160.003(a)(2)-(6), (b), 160.012(a), (c)(1)(B) (Vernon 2000).
- D. TEX. OCC. CODE ANN. §§ 301.402(b)-(c), 301.410, 301.413(b), (d)(1) (Vernon 2000). See Tex. Occ. Code Ann. §§ 301.401, 301.412(2) (Vernon 2000).

Discussion:

- A. The attorney general has said that severance pay violates various provisions of the Texas constitution if the pay is not a term or condition of employment at the time the person receiving the pay terminates employment. If the Texas legislature enacted a law authorizing a state agency to provide severance pay to terminating employees on or after the effective date of the law, then the severance pay granted on or after the effective date would be constitutional. The pay would be part of the employees' compensation package.

A state agency that is not an institution of higher education may adopt severance pay as part of the compensation package of the agency's employees only if the agency has specific statutory authority to do so.

- B. A person licensed under the Texas Professional Social Work Act may report to the appropriate licensing board, agency, or facility an incident that the person has reasonable cause to believe has exposed a client to substantial risk of harm. A person who, without malice, makes a report authorized, or reasonably believed to be authorized, under Section 505.451, Occupations Code, may not be subjected by the person's employer to retaliatory action as a result of making the report.

More specifically, a state agency or institution of higher education may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who makes a report, without malice, under Section 504.451. A person whose employment is terminated or suspended in violation of this prohibition has a cause of action against the agency or institution who made the termination or suspension. Among other things, the terminated or suspended person is entitled to reinstatement in the person's former position or severance pay in an amount equal to three months of the person's most recent salary.

The preceding paragraph applies only to a report that a person makes on or after September 1, 1999.

- C. A person shall report relevant information to the TSBME relating to the acts of a physician in this state if, in the person's opinion, the physician poses a continuing threat to the public welfare through the practice of medicine. In this paragraph, "person" means:
 - A physician licensed in this state or otherwise lawfully practicing medicine in this state; or
 - A physician engaged in graduate medical education or training; or

- A medical student; or
- A physician assistant or acupuncturist licensed in this state or otherwise lawfully practicing in this state; or
- A physician assistant student or an acupuncturist student.

A person may not suspend, terminate, or otherwise discipline or discriminate against a person who makes a report to TSBME in accordance with the preceding paragraph. A person who is unlawfully suspended or terminated may have a cause of action for, among other things, severance pay in an amount equal to three months of the person's most current salary.

D. A registered nurse is required to report to the Board of Nurse Examiners (BNE) if the nurse has reasonable cause to suspect that:

- Another registered nurse is subject to a ground for reporting; or
- The ability of a professional nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

A registered nurse may report to the appropriate licensing board a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing professional practice.

Instead of making a report to the BNE, a registered nurse may report to an approved peer assistance program another registered nurse who is impaired or suspected of being impaired by chemical dependency or mental illness.

A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a registered nurse who makes a report without malice. A nurse whose employment is unlawfully suspended or terminated is entitled to, among other things, severance pay in an amount equal to three months of the nurse's most recent salary.

Stand-by Pay

Applies to:

- A. Texas Department of Transportation (TxDOT).
- B. General Services Commission (GSC).

Sources:

- A. Rider 10 in the appropriations to the Department of Transportation in the General Appropriations Act (GAA).
- B. Rider 18 in the appropriations to the State General Services Commission in the GAA.

Discussion:

- A. To the extent permitted by law, TxDOT may pay compensation for on-call time at the following rates: credit for one hour worked per day on-call during the normal work week and two hours worked per day on-call during weekends and holidays. This credit is in addition to actual hours worked during normal duty hours or while on-call. Non-exempt employees who work a normal 40 hour week, and also work on-call duty, will receive Fair Labor Standards Act (FLSA) overtime rates for the on-call duty.
- B. To the extent permitted by law, GSC may pay compensation for on-call time at the following rates: credit for one hour worked for each day on-call during the normal work week and credit for two hours worked for each day on-call during weekends and holidays. This credit is in addition to actual hours worked during normal duty hours and actual hours worked during on-call status. For employees subject to the FLSA, an hour of on-call service is considered to be an hour worked during the week for the purposes of the FLSA, but only to the extent required by federal law.

Student Employment

Applies to:

Texas Youth Commission (TYC).

Source:

Rider 5 in the appropriations to the Youth Commission in the General Appropriations Act.

Discussion:

Students residing in a TYC facility and assigned necessary duties in that facility may be paid out of any funds available to the institution or facility not to exceed \$50,000 per year for each institution and \$10,000 per year for any other facility.

Supplemental Pay for Officers of the Department of Public Safety of the State of Texas

Applies to:

Each officer commissioned by the Department of Public Safety of the State of Texas (DPS) who is not employed in a position that the public safety director has declared to be administrative, executive, or professional.

Sources:

TEX. GOV'T CODE ANN. § 411.001(2)-(3) (Vernon Supp. 2000), § 411.016 (Vernon 1998).

Discussion:

If, during a calendar week, the total number of hours worked by a commissioned officer plus the number of hours of leave taken for which the officer is entitled to compensation equal more than 40 hours, the excess is overtime. For this purpose, approved sick leave, vacation, holiday, holiday compensatory time, emergency leave, administrative leave, and jury duty are specifically included among the types of leave.

For each calendar month, the overtime for each week ending during that month shall be totaled. If the total overtime for the month exceeds eight hours, the officer may receive, in addition to the officer's regular monthly salary, a supplement determined as follows:

- A commissioned officer who accumulates more than eight hours but fewer than 16 hours of overtime in a calendar month may receive five percent of the officer's regular monthly salary; and
- A commissioned officer who accumulated at least 16 hours but fewer than 32 hours of overtime in a calendar month may receive ten percent of the officer's regular monthly salary; and
- A commissioned officer who accumulated at least 32 hours of overtime in a calendar month may receive fifteen percent of the officer's regular monthly salary.

The formula set forth in the preceding paragraph is the exclusive method for computing state compensation for overtime entitlements. This does not apply to the method of compensating a commissioned officer for working on regularly scheduled state holidays.

A commissioned officer may receive a supplement paid by the federal government earned while working on a project funded by the federal government. That supplement may not be considered in determining the officer's overtime entitlement.

If the funds appropriated to DPS to provide supplement pay are insufficient to pay all earned overtime entitlements, the public safety director may provide for compensatory time to be taken during the biennium in which the entitlements are earned.

Underwater Bridge Inspection Pay

Applies to:

Texas Department of Transportation (TxDOT).

Source:

Rider 12 in the appropriations to the Department of Transportation in the General Appropriations Act.

Discussion:

TxDOT may compensate employees who perform underwater bridge inspections an additional rate of pay up to \$25.00 per hour for actual time spent performing these inspections. The purpose is to adequately compensate employees who perform hazardous duties for the state.

Payments Specific to Institutions of Higher Education

Generally, institutions of higher education may determine the compensation of their employees in the absence of specific laws or appropriations riders concerning the amounts and types of employee compensation. The following discusses only the types of compensation that are specifically mentioned in statutes or riders.

Benefit Replacement Pay For Institutions of Higher Education

Sources:

TEX. GOV'T CODE ANN. § 606.061(3) (Vernon 1994), §§ 659.121-659.122, 659.124, 659.126-659.127, 822.201(c) (Vernon Supp. 2000).

Discussion:

The salary or wages paid by an institution of higher education after December 31, 1995, to an eligible state employee or eligible state-paid judge must include benefit replacement pay (BRP).

The purpose of BRP is to offset the repeal of the state's payment of the taxes imposed on state employees and state-paid judges under the Federal Insurance Contributions Act (FICA). This payment was commonly known as "state-paid social security." Beginning with wages paid January 1, 1996, state-paid social security ceased.

Definitions

For the purpose of BRP:

- **Employee tax** means the tax that state employees and state-paid judges pay under FICA.
- **Optional retirement program** means the program governed by Chapter 830, Government Code.

- **Retirement contribution** means a mandatory contribution by an eligible state employee or eligible state-paid judge to a retirement system.
- **Retirement system** means the optional retirement program (ORP) or the Teacher Retirement System of Texas (TRS).
- **State agency** means:
 - A department, commission, board, office, or other agency in the executive or legislative branch created by the constitution or a statute of this state; or
 - The supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or
 - A university system or an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

Entitlement

An individual is an “eligible state employee” if the individual was on August 31, 1995:

- Employed by a state agency and eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date; or
- Using unpaid leave from a position with a state agency, if the individual would have been eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date had the individual not been using unpaid leave from that position; or
- Not working for a state agency if:
 - The sole reason for not working for the agency was that the individual’s employment with the agency customarily did not include the summer months; and
 - The individual had contracted with the agency not later than that date for the individual to resume working for the agency not later than September 2, 1995; and
 - The position held by the individual on September 2, 1995, would have made the individual eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on August 31, 1995, if the individual had held the position on that date.

An individual is an “eligible state-paid judge” if the individual on August 31, 1995:

- Held office; and
- Was eligible for state payment of the employee tax under Section 606.065, Government Code, as that section existed on that date.

There is no requirement that an individual satisfy the requirements to be an “eligible state employee” or an “eligible state-paid judge” for the entire day on August 31, 1995. It is sufficient that the individual satisfied those requirements for any part of the day.

As the preceding requirements demonstrate, an individual’s status as an eligible state employee or an eligible state-paid judge depends entirely on the facts that existed on August 31, 1995. Therefore, the mere fact that an individual is currently an officer does not prevent the individual from being an eligible state employee. And the mere fact that an individual is currently an employee does not prevent the individual from being an eligible state-paid judge. Any reference in this guide to an individual being an eligible state employee or an eligible state-paid judge is a reference to the facts pertaining to the individual as of August 31, 1995.

Each institution of higher education is responsible for determining whether individuals were employed by a state agency or held office on August 31, 1995.

Employment determinations will be simple unless unusual factual circumstances exist. When this happens, an institution of higher education should consult internal legal counsel, the attorney general’s office, or other appropriate legal counsel. The Comptroller is unable to make an employment determination on behalf of the institution.

The following are some questions that an institution of higher education may find useful when determining an individual’s employment status on August 31, 1995:

- Did the individual provide services for the state on August 31, 1995, for which the individual was compensated on a state payroll?
- Did the individual not perform services for the state on August 31, 1995, merely because the individual was using paid leave on that date?
- If the individual performed services on August 31, 1995, but was not paid for those services, did the individual receive any other type of benefit or compensation for those services?
- Did the individual have a written contractual obligation to perform services on August 31, 1995? If so, what were the terms of the contract with respect to being an employee versus an independent contractor?

Calculating BRP

BRP is not paid under a separate Comptroller object code.

The amount of an eligible state employee's or eligible state-paid judge's BRP for a calendar year is equal to the sum of 5.85 percent of the employee's or judge's annualized compensation rate as of the pay period that included October 31, 1995, not to exceed \$965.25 and an additional amount equal to the retirement contribution paid by the employee or judge because of the BRP.

“Annualized compensation rate” is computed as discussed on the following page.

An institution of higher education was responsible for ensuring that the total compensation paid to each eligible state employee or eligible state-paid judge during calendar year 1996 was increased by the amount of the BRP entitlement.

For each calendar year after 1996, an institution of higher education shall ensure that the total compensation paid to each eligible state employee or eligible state-paid judge includes the BRP entitlement. The institution shall keep sufficient records to prove compliance with this requirement and make those records available to the Comptroller upon request.

The Comptroller encourages an institution of higher education to discuss BRP openly with eligible state employees and eligible state-paid judges during contract negotiations for services provided each calendar year. The Comptroller recommends the use of contract provisions that specifically acknowledge the inclusion of BRP in total compensation. The purpose is to avoid any argument or implication that an individual is not receiving the BRP to which the individual is entitled.

Computation of Annualized Compensation Rates

The “annualized compensation rate” of an individual must be computed according to the following formula:

$$ACR = (BC + LH) \times P, \text{ where:}$$

- **ACR** means the individual's annualized compensation rate.
- **BC** means the individual's base compensation for services rendered during the pay period that included October 31, 1995.
- **LH** means the longevity pay or hazardous duty pay that the individual received for services rendered during the pay period that included October 31, 1995.
- **P** means the number of times the individual would be paid base compensation if the individual were paid as frequently as the individual was paid as of the pay period that included October 31, 1995.

In the above formula, the “BC” of an individual who worked part-time as of the pay period that included October 31, 1995, is not based on a full-time equivalent rate. Instead, it is based on the compensation paid for the part-time hours worked.

The “BC” of an individual who was paid on an hourly basis as of the pay period that included October 31, 1995, is the product of the individual’s average hourly base compensation rate for the pay period that included October 31, 1995; and the number of hours the individual is normally scheduled to work during a pay period that is the same length as the pay period that included October 31, 1995. The number of hours must be based on policies in effect on October 31, 1995.

In the formula, “P” would be 12 for an individual who was being paid on a monthly basis as of that pay period. “P” would be 24 for an individual who was being paid twice per month as of that pay period. And “P” would be 26 for an individual who was being paid every-other-week as of that pay period.

For an individual who works less than a full year, “P” in the above formula would be the number of times that the individual will be paid during the time the individual is scheduled or contracted to work. This must be determined as of the pay period that included October 31, 1995. For example, “P” would be 18 for an individual who was paid twice per month and who was under contract to work for only 9 months as of that pay period.

Changes in the Number of Hours that Individuals are Regularly Scheduled to Work

The amount of BRP that an individual is entitled to receive is not affected by a change in the number of hours that the individual is regularly scheduled to work. Therefore, the amount of BRP for an individual who was part-time during the pay period that included October 31, 1995, would not change if the individual became full-time at a later date. Similarly, the amount of BRP for an individual who was full-time during the pay period that included October 31, 1995, would not change if the individual became part-time at a future date.

Institutions of higher education generally have substantial discretion to determine the compensation amounts of their officers and employees. Therefore, whenever an institution of higher education decides to change an individual’s regularly scheduled work hours, the institution generally may negotiate with the individual about a new compensation amount. The negotiations may consider the fact that BRP does not change when the number of regularly scheduled work hours changes. The following two examples illustrate this principle.

Example 1

Assume that an eligible state employee who was half-time during the pay period that included October 31, 1995, moves to full-time effective April 1, 2000. The employee's half-time annualized compensation rate as of October 31, 1995, was \$13,000, exclusive of BRP. The employee is entitled to \$812.50 in BRP per year because the employee is a member of TRS. The amount of this entitlement does not change when the employee moves to full-time. Regardless of the employee's new compensation rate after the change to full-time, the employee's BRP entitlement is still \$812.50. The employing institution of higher education, however, may agree to pay the employee more in non-BRP compensation to make up for the BRP amount that did not change. This extra non-BRP compensation may not be termed or reported as BRP.

Example 2

Assume that an eligible state employee who was full-time during the pay period that included October 31, 1995, moves to half-time effective April 1, 2000. The employee's full-time annualized compensation rate as of October 31, 1995, was \$26,000, exclusive of BRP. The employee is entitled to \$1,031.25 in BRP per year because the employee is a member of TRS. The amount of this entitlement does not change when the employee moves to half-time. Regardless of the employee's new compensation rate after the change to half-time, the employee's BRP entitlement is still \$1,031.25. The employing institution of higher education, however, may agree to pay the employee less in non-BRP compensation to make up for the BRP amount that did not change. The institution is still required to pay \$1,031.25 in BRP to the employee.

Calculation Factors and Maximums

The amount of annual BRP for an individual must be computed according to the following formula:

$$ABRP = ACR \times F, \text{ where:}$$

- **ABRP** means the individual's annual BRP. This amount may not exceed the maximum annual BRP in the table below for the retirement system in which the individual participates.
- **ACR** means the individual's annualized compensation rate.
- **F** means the factor in the table below for the retirement system in which the individual participates.

Name of Retirement System	Retirement Contribution Rate	Factor	Annual BRP Maximum
Teacher Retirement System of Texas	6.40%	0.0625	\$1,031.25
Optional Retirement Program	6.65%	0.062667381	\$1,034.01
Not Participating in a Retirement System	0.00%	0.0585	\$965.25

The annual BRP maximum is figured on a calendar year basis, not on a fiscal year basis.

Payment of BRP

The annual BRP of an individual must be paid in installments at the same time as the individual's base compensation.

The amount of BRP for an individual who is not hourly is equal to the amount of BRP the individual is entitled to receive per calendar year divided by the number of pay periods in the year for which the individual will be paid base compensation.

The amount of BRP for an individual who is paid hourly must be determined as follows:

- First, calculate the individual's hourly rate of BRP by dividing the total amount of BRP the individual is entitled to receive per calendar year by the total number of hours the individual is expected to work during that year.
- Second, multiply this hourly rate (after rounding to the nearest cent) by the number of hours worked in the pay period. This is the amount of the individual's BRP for that period.

Treatment of Transfers

This paragraph applies when an individual transfers from an institution of higher education to a state agency that is not an institution of higher education. The institution shall calculate and report to the agency the amount of BRP that the individual has received from the beginning of the calendar year to the effective date of the transfer.

This paragraph applies when an individual transfers from a state agency that is not an institution of higher education to an institution of higher education. The agency shall report to the institution the amount of BRP that the individual has received from the beginning of the calendar year to the effective date of the transfer. The institution shall calculate the amount of BRP that the individual is entitled to receive during the calendar year in which the transfer occurs. The calculation shall be made as if the individual worked for an institution of higher education during the pay period that included October 31, 1995. The institution shall pay, over the remainder of the calendar year, the difference between the amount the individual received before the transfer and the amount the individual is entitled to receive during that year. If that difference is zero or negative, then the institution may not pay any BRP to the individual during that year. The individual is not liable to the state for a negative BRP balance.

If the time between the two employments is less than twelve consecutive months, then the individual's entitlement to receive the pay after the transfer will continue. The mere fact that an individual transfers from one agency or institution to another does not end the individual's entitlement to receive BRP.

Loss of Eligibility to Receive BRP

An individual who for at least 12 consecutive months holds neither a state office nor a state employment forever loses any BRP eligibility the individual had. The 12 consecutive month period does not include any days occurring before September 1, 1995. The 12 consecutive month period ends on the anniversary date of the last day of employment or holding office. For example, the period for an individual whose last day of state employment is September 15, 2000, will end on September 15, 2001. If the individual returns to state employment before September 15, 2001, the individual's BRP eligibility would not be affected. But if the individual returns after September 14, 2001, the individual would have forever lost any BRP eligibility the individual had.

Leveling BRP

An individual who works for an institution of higher education does not have the option of leveling the individual's BRP.

Tracking BRP Eligibility in the Human Resource Information System (HRIS)

The employee job information record (Record ID 66) in HRIS captures the BRP eligibility indicator field to accommodate reporting needs.

The valid values for the field are defined as follows:

- Y** The employee is eligible for BRP and chooses to level BRP (not available for institutions of higher education).
- N** The employee is eligible for BRP and either is not eligible for BRP leveling or has not chosen to level BRP.
- W** The employee is not eligible for BRP.

All September reappointment personnel maintenance transactions (Reason Code 900) currently require a value to be reported in the BRP leveling indicator field.

Reporting BRP to HRIS

The actual dollar amount of the increase to salary, due to BRP, must be reported to HRIS on the Employee Descriptive Information record in the "BRP Increase" field (Record ID 26 for classified and locally funded agencies and Record ID 27 for higher education).

Retirement Eligibility of BRP Paid to Members of the Teacher Retirement System of Texas or Individuals Participating in the Optional Retirement Program

With two exceptions, BRP constitutes "salary and wages," as that term is defined by TEX. GOV'T CODE ANN. § 822.201(b) (Vernon Supp. 2000). BRP does not constitute "salary and wages" when earned as a result of a lump sum payment of accrued vacation time or a lump sum payment of accrued vacation and sick leave. Whenever BRP constitutes "salary and wages":

- A retirement contribution must be deducted from the BRP; and
- The BRP must be considered when determining the amount of the state's contribution to TRS or ORP.

Compensatory Time Pay

Sources:

TEX. GOV'T CODE ANN. §§ 659.015(f)-(g), 662.007(c) (Vernon Supp. 2000).

Discussion:

An institution of higher education may pay an employee who is required to work on a national or state holiday that does not fall on a Saturday or Sunday for the time worked on the holiday if the institution determines that allowing the employee to take compensatory time off would disrupt normal teaching, research, or other critical functions. The payment must be at the employee's regular rate of pay.

This paragraph applies only to an employee who works 40 or fewer hours during a workweek but whose total hours of work and paid leave (including holidays) during that week exceeds 40. An institution of higher education may pay the employee for the hours in excess of 40 if the institution determines that allowing the employee to take compensatory time off would disrupt normal teaching, research, or other critical functions. The payment must be at the employee's regular rate of pay. This paragraph applies only to a state employee who is subject to the overtime provisions of the Fair Labor Standards Act of 1938 (FLSA).

This paragraph applies only to an employee who works more than 40 hours during a workweek and who is subject to the overtime provisions of the FLSA. An institution of higher education may pay the employee for any paid leave (including holidays) taken during the week if the institution determines that allowing the employee to take compensatory time off would disrupt normal teaching, research, or other critical functions. The payment must be at the employee's regular rate of pay.

For the purposes of this type of pay:

- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **National holiday** has the meaning assigned by TEX. GOV'T CODE ANN. § 662.003(a) (Vernon Supp. 2000).
- **State holiday** has the meaning assigned by TEX. GOV'T CODE ANN. § 662.003(b) (Vernon Supp. 2000).

Faculty Development Leave of Absence

Sources:

TEX. EDUC. CODE ANN. §§ 51.101(1), (3), 51.103(a), 51.104, 51.105(a), 51.106 (Vernon 1996).

Discussion:

The governing board of an institution of higher education may grant a faculty development leave of absence to a faculty member for study, research, writing, field observations, or other suitable purpose if the board finds that:

- The faculty member is eligible by reason of service; and
- The purpose for which leave is sought is one for which leave may be granted; and
- Granting the leave will not place on faculty development leave a greater number of faculty members than the authorized number.

A faculty member is eligible by reason of service if the member has served as a member of the faculty of the same institution of higher education for at least two consecutive academic years. The service must be full-time academic duty and may be as an instructor or as an assistant, associate, or full professor, or an equivalent rank. The service need not include teaching.

Faculty development leave may be granted either for:

- One academic year at one-half of the faculty member's regular salary; or
- One-half of an academic year at the faculty member's regular salary.

Not more than six percent of the faculty members of an institution of higher education may be on faculty development leave at any one time.

A faculty development leave of absence must comply with the requirements of Subchapter C of Chapter 51, Education Code.

For the purpose of this type of leave:

- **Faculty member** means a person who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties including teaching, research, administration, including professional librarians, or the performance of professional services. The term does not include a person employed in a position that is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system.
- **Institution of higher education** has the meaning assigned by Tex. Educ. Code Ann. § 61.003 (Vernon Supp. 2000), except that the Texas State Technical College System is included and the Rodent and Predatory Animal Control Service is excluded from the meaning of that term.

Housing Allowance

Sources:

- A. Article III, Section 5(2) of the General Appropriations Act (GAA).
- B. Article III, Section 5(3) of the GAA.

Discussion:

- A. A general academic institution, a health center, a health science center, or a medical education program may use the institution's appropriation to pay not more than \$7,200 per year to the president of the institution, center, or program if an institutionally owned house is not available for the president. Additional amounts from institutional funds may be paid to the president for this same purpose. For the purposes of this paragraph, **general academic institution** has the meaning assigned by Article III, Section 3(1) of the GAA.
- B. A system office may use its appropriation to pay not more than \$7,200 per year to the system's chancellor if a system owned house is not available for the chancellor. Additional amounts from institutional and private funds may be paid to the chancellor for the same purpose.

Merit Salary Increase

Source:

Article III, Section 5(4)-(5) of the General Appropriations Act (GAA).

Discussion:

An institutional administrator may grant a merit salary increase to an employee whose job performance and productivity is consistently above that normally expected or required.

Notwithstanding anything in the GAA, a salary increase for a faculty member or a faculty equivalent employee of an institution of higher education must be awarded on the basis of merit and performance in accepted activities.